No. 84-310

(7)

In The

Supreme Court of the United States

October Term, 1984

In the Matter of:
Attorney Robert J. Snyder.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

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58502-2056

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Attorneys for Petitioner

(Other Counsel on Inside Cover)

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Attorneys for Petitioner

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CJA Form 20 (Rev. 8/82)

APPOINTMENT OF AND AUTHORITY TO PAY COURT APPOINTED COUNSEL

1. COURT
☐ Magistrate ☒ District ☐ Appeals ☐ Other _____

2. VOUCHER NO.
746874

3. FOR (DISTRICT OR CIRCUIT)
NORTH DAKOTA

4. AT (CITY/STATE)
BISMARCK

5. LOCATION CODE
34101

6. IN THE CASE OF
U.S.A. VS DENNIS WARREN

7. CHARGE/OFFENSE (U.S. or Other Code Citation)
21:841, 843, 844 & 846

8. ☐ PETTY OFFENSE
☒ FELONY ☐ MISDEMEANOR

9. PROCEEDINGS (Describe briefly)
Trial/Sentencing

10. PERSON REPRESENTED (Full Name)
DENNIS WARREN

11. PERSON REPRESENTED
1 ☒ Defendant — Adult
2 ☐ Defendant — Juvenile
3 ☐ Appellant
4 ☐ Appellee
5 ☐ Habeas Petitioner
6 ☐ 2255 Petitioner
7 ☐ Material Witness
8 ☐ Parolee Charged With Violation
9 ☐ Probationer Charged With Violation
0 ☐ Other:

12. MAG. DOCKET NO.

13. DIST. DOCKET NO.
Cl-83-4-01

14. APPEALS DOCKET NO.

15. COURT ORDER
☒ Appointing Counsel ☐ Ext. Appointment for Appeal ☐ Subs. Counsel for: _____ Name

Because the above-named "person represented" has testified under oath or has otherwise satisfied this court that he or she (1) is financially unable to employ counsel and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney whose name appears in Item 16 is appointed to represent this person in this case.

Appt. Date _____ Voucher No. _____

▶ /s/ Bruce M. Van Sickle
Sig. of Judge/Magistrate or By Order of Court (Clerk/Deputy)

▶ March 14, 1983
Date of Order

▶ _____
Nunc Pro Tunc Date

16. NAME OF ATTORNEY/PAYEE AND MAILING ADDRESS
Robert J. Snyder
219-1/2 East Broadway
Bismarck, North Dakota 58501

17. TELEPHONE No.
(701) 258-1611

18. SOCIAL SECURITY NO.
475-52-1817

CLAIM FOR SERVICES AND EXPENSES

19.	SERVICE	HOURS	DATES	AMOUNTS CLAIMED
IN COURT	a. Arraignment and/or Plea	-0-		Multiply rate per hour times total hours to obtain "In Court" compensation. Enter total below.
	b. Motions and Requests	-0-		
	c. Bail Hearings	-0-		
	d. Sentence Hearings	1.75	June 7, 1983	
	e. Trial	35.00	May 2 - 6, 1983	

CLAIM FOR SERVICES OR EXPENSES

19.	SERVICE	HOURS	DATES	AMOUNTS CLAIMED
IN COURT	a. Arraignment and/or Plea	-0-		Multiply rate per hour times total hours to obtain "In Court" compensation. Enter total below.
	b. Motions and Requests	-0-		
	c. Bail Hearings	-0-		
	d. Sentence Hearings	1.75	June 7, 1983	
	e. Trial	35.00	May 2 - 6, 1983	
	f. Revocation Hearings	-0-		
	g. Appeals Court	-0-		19A. TOTAL IN COURT COMP.
	h. Other (Specify on additional sheets)	-0-		
	(Rate per hour = $30.00) TOTAL HOURS =	36.75		$ 1,102.50
20. OUT OF COURT	a. Interviews and conferences	20.89	Mar. 15-Jul.8, 83	Multiply rate per hour times total hours. Enter total "Out of Court" compensation below.
	b. Obtaining and reviewing records	8.50	Mar. 15-Jul.8, 83	
	c. Legal research and brief writing	7.07	Mar. 15-Jul.8, 83	
	d. Travel time (Specify on additional sheets)	-0-		20A. TOTAL OUT OF COURT COMP.
	e. Investigative and other work (Specify on additional sheets)	-0-		
	(Rate per hour = $20.00) TOTAL HOURS =	36.46		$ 729.20

21. OTHER	ITEMIZATION OF REIMBURSABLE EXPENSES	AMT. PER ITEM	
	Long distance telephone calls	~~$43.60~~	See instructions regarding the requirement to attach receipts.
	93 photocopies at 25 cents each	23.25	
			21A. TOTAL ITEMIZED EXP.
			$ 66.85

22. CERTIFICATION OF ATTORNEY/PAYEE

Has compensation and/or reimbursement for work in this case previously been applied for? ☐ YES ☒ NO

If yes, were you paid? ☐ YES ☐ NO If yes, by whom were you paid? _____ How much? _____

Has the person represented paid any money to you, or to your knowledge to anyone else, in connection with the matter for which you were appointed to provide representation? ☐ YES ☒ NO If yes, give details on additional sheets.

I swear or affirm the truth or correctness of the above statements ▶ _____ Signature of Attorney/Payee ▶ Date: 8/9/83

23. GRAND TOTAL CLAIMED $ 1,898.55

24. DEDUCT PRIOR PYMTS. $ -0-

25. NET AMOUNT CLAIMED $ 1,898.55

26. APPROVED FOR PAYMENT

Signature of Judge/Magistrate ▶ Bruce M. Van Sickle ▶ Date:

Signature of Chief Judge, Ct. of Appeals ▶ BPL ▶ Date: 11-16-83

Excess payment approved under 18 U.S.C. 3006A(d)(3)

27. AMT. APPROVED/CERT. $ 1796.05

28. AMOUNT APPROVED $ 1023.25

Copy 1 - Mail to Administrative Office after service rendered

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

DATE: September 6, 1983

TO: Judge Van Sickle

FROM: DONALD P. LAY, Chief Judge.

IN RE: Cl-83-4-01. U.S.A. v. Dennis Warren

I am returning herewith CJA20 in the above-entitled matter. Pursuant to the Guidelines for the Administration of the Criminal Justice Act, counsel needs to submit with his voucher a detailed memorandum supporting his claim (see 2.22 B, second paragraph).

Additionally, counsel should support his claim for long distance calls by attaching an itemized list with reasonable documentation.

I would appreciate your requesting the above from Mr. Snyder. Upon receipt of the above, Judge Lay will be able to process the voucher. Thanks for your help.

/s/ june boadwine

Encl.

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Robert J. Snyder

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September 20, 1983

Helen Monteith
Clerk of Federal Court
Federal Building
3rd Street & Rosser Avenue
Bismarck, ND 58501

Re: Dennis Warren

Dear Ms. Monteith:

Enclosed with this letter you will find a copy of our billing records with regard to the above-entitled individual. These are all of the records which we have in our possession.

Thank you for your time and attention.

Very truly yours,

BICKLE, COLES AND SNYDER, CHARTERED
/s/ Robert J. Snyder
Robert J. Snyder
Attorney at Law

RJS/jft
enclosures

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STATEMENT

Dennis Warren
5617 Jay Road
Boulder, CO 80302

Acct. No. 445
Services thru 03/31/83
RE: 83-92 DelCocai Page 1

Date	Description	Amount
	Previous Balance:	$.00
03/15/83	Telephone Conference With Client √	3.00
03/21/83	Telephone Conference With Client √	10.00
03/15/83	Telephone Conference With Client √	6.60
03/15/83	Telephone Conference With Opposing Attorney √	5.00
03/16/83	Telephone Conference With Opposing Attorney √	4.00
03/14/83	Telephone Conference With Opposing Attorney √	2.00
03/21/83	Telephone Conference With Opposing Attorney √	3.00
03/21/83	Telephone Conference With Opposing Attorney √	3.00
03/17/83	Telephone Call On Behalf Of Client √	2.00
03/14/83	Telephone Call On Behalf Of Client √	3.00
03/14/83	Telephone Call On Behalf Of Client √	3.00
03/15/83	Telephone Call On Behalf Of Client √	3.00
03/14/83	Telephone Call On Behalf Of Client √	2.00
03/15/83	Telephone Call On Behalf Of Client √	3.00
03/21/83	Telephone Call On Behalf Of Client √	2.00
03/22/83	Telephone Call On Behalf Of Client √	2.00
03/21/83	Telephone Call On Behalf Of Client √	2.00
03/17/83	Attended Conference On Behalf Of Client √	10.00
03/23/83	Drafted Letter On Behalf Of Client √	6.60
03/21/83	Performed Legal Research On Pertinent Case Law √	20.00

Please Return Top Portion of Statement With Your Payment.

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STATEMENT

Dennis Warren
5617 Jay Road
Boulder, CO 80302

Acct. No. 445
Services thru 03/31/83
RE: 83-92 DelCocai Page 2

Date	Description	Amount
	Previous Balance:	
03/21/83	Performed Legal Research On Pertinent Statutory Provisions √	20.00
03/21/83	Performed Legal Research On Pertinent Statutory Provisions √	15.00
03/17/83	Performed Investigation In Regard To Client's Case √	20.00
03/15/83	Long Distance Telephone Charges √	3.50
03/15/83	Long Distance Telephone Charges √	4.25
03/21/83	Long Distance Telephone Charges √	16.70
	New Charges	174.65
	New Balance	$174.65

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STATEMENT

Dennis Warren
5617 Jay Road
Boulder, CO 80302

Acct. No. 445
Services thru 04/30/83
RE: 83-92 DelCocai
Page 1

Date	Description	Amount
	Previous Balance:	$174.65
04/26/83	Telephone Conference With Client √	2.00
04/21/83	Telephone Conference With Client √	3.00
04/20/83	Telephone Conference With Client √	2.00
04/26/83	Telephone Conference With Client √	3.00
04/20/83	Telephone Conference With Client √	2.00
04/29/83	Telephone Conference With Client √	3.00
04/28/83	Telephone Conference With Opposing Attorney √	6.60
04/28/83	Telephone Conference With Opposing Attorney √	6.60
04/20/83	Telephone Conference With Opposing Attorney √	2.00
04/26/83	Telephone Conference With Opposing Attorney √	3.00
04/26/83	Telephone Conference With Opposing Attorney √	2.00
04/29/83	Telephone Conference With Opposing Attorney √	2.00
04/26/83	Telephone Call On Behalf Of Client √	2.00
04/18/83	Telephone Call On Behalf Of Client √	2.00
04/20/83	Telephone Call On Behalf Of Client √	2.00
04/27/83	Telephone Call On Behalf Of Client √	6.00
04/27/83	Telephone Call On Behalf Of Client √	6.00
04/28/83	Telephone Call On Behalf Of Client √	4.00
04/28/83	Telephone Call On Behalf Of Client √	15.00
04/28/83	Telephone Call On Behalf Of Client √	—15.00

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STATEMENT

Dennis Warren
5617 Jay Road
Boulder, CO 80302

Acct. No. 445
Services thru 04/30/83
RE: 83-92 DelCocai
Page 2

Date	Description	Amount
	Previous Balance:	
04/28/83	Telephone Call On Behalf Of Client √	5.00
04/26/83	Telephone Call On Behalf Of Client √	2.00
04/04/83	Conference With Client √	6.60
04/18/83	Drafted Letter To Client √	6.60
04/21/83	Drafted Letter To Clerk Of Court √	6.60
04/21/83	Drafted Motion On Behalf Of Client √	6.60
04/18/83	Drafted Motion On Behalf Of Client √	6.60
04/29/83	Performed Investigation In Regard To Client's Case √	23.00
04/28/83	Reviewed Client's Records And Files √	15.00
04/18/83	Drafted Affidavit/Admission Of Service √	5.00
04/21/83	Drafted Affidavit/Admission Of Service √	5.00
04/21/83	Prepared Jury Instructions √	30.00
04/25/83	Photocopies At $.25 Each √	8.00
04/04/83	Photocopies At $.25 Each √	11.50
04/19/83	Photocopies At $.25 Each √	1.25
04/20/83	Long Distance Telephone Charges √	2.65
04/21/83	Long Distance Telephone Charges √	2.80
04/20/83	Long Distance Telephone Charges √	4.00
04/26/83	Long Distance Telephone Charges √	3.10

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STATEMENT

Dennis Warren
5617 Jay Road
Boulder, CO 80302

Acct. No. 445
Services thru 04/30/83
RE: 83-92 DelCocai Page 3

Date	Description	Amount
	Previous Balance:	
	New Charges	210.50
	New Balance	$385.15

Please Return Top Portion of Statement With Your Payment.

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STATEMENT

Dennis Warren
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Acct. No. 445
Services thru 05/31/83
RE: 83-92 DelCocai Page 1

Date	Description	Amount
	Previous Balance:	$385.15
05/13/83	Telephone Conference With Client √	3.00
05/09/83	Telephone Conference With Client √	2.00
05/24/83	Telephone Conference With Client √	3.00
05/09/83	Telephone Conference With Client √	2.00
05/11/83	Telephone Conference With Client √	2.00
05/12/83	Telephone Conference With Client √	6.00
05/11/83	Telephone Conference With Client √	5.00
05/13/83	Telephone Call On Behalf Of Client √	2.00
05/11/83	Telephone Call On Behalf Of Client √	2.00
05/12/83	Telephone Call On Behalf Of Client √	6.00
05/11/83	Telephone Call On Behalf Of Client √	2.00
05/12/83	Telephone Call On Behalf Of Client √	6.00
05/24/83	Telephone Call On Behalf Of Client √	2.00
05/05/83	Conference With Client √	20.00
05/06/83	Conference With Client √	20.00
05/01/83	Conference With Client √	55.00
05/02/83	Conference With Client √	20.00
05/03/83	Conference With Client √	20.00
05/04/83	Conference With Client √	20.00
05/09/83	Attended Conference On Behalf Of Client √	6.60

Please Return Top Portion of Statement With Your Payment.

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5617 Jay Road
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Acct. No. 445
Services thru 05/31/83
RE: 83-92 DelCocai Page 2

Date	Description	Amount
	Previous Balance:	
05/09/83	Drafted Motion On Behalf Of Client √	6.60
05/09/83	Drafted Motion On Behalf Of Client √	6.60
05/03/83	Appeared For Client At Jury Trial √	140.00
05/05/83	Appeared For Client At Jury Trial √	160.00
05/02/83	Appeared For Client At Jury Trial √	140.00
05/06/83	Appeared For Client At Jury Trial √	160.00
05/04/83	Appeared For Client At Jury Trial √	140.00
05/03/83	Reviewed Client's Records And Files √	20.00
05/01/83	Reviewed Client's Records And Files √	35.00
05/05/83	Reviewed Client's Records And Files √	20.00
05/02/83	Reviewed Client's Records And Files √	20.00
05/04/83	Reviewed Client's Records And Files √	20.00
05/06/83	Photocopies At $.25 Each √	1.00
	New Charges	1,073.80
	New Balance	$1,458.95

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STATEMENT

Dennis Warren
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Boulder, CO 80302

Acct. No. 445
Services thru 06/30/83
RE: 83-92 DelCocai Page 1

Date	Description	Amount
	Previous Balance:	$1,458.95
06/14/83	Telephone Conference With Client √	3.00
06/06/83	Telephone Conference With Client √	3.00
06/06/83	Telephone Conference With Opposing Attorney √	6.00
06/06/83	Telephone Call On Behalf Of Client √	3.00
06/06/83	Telephone Call On Behalf Of Client √	2.00
06/06/83	Telephone Call On Behalf Of Client √	2.00
06/06/83	Telephone Call On Behalf Of Client √	6.00
06/07/83	Conference With Client √	10.00
06/06/83	Conference With Client √	15.00
06/07/83	Attended Conference On Behalf Of Client √	10.00
06/29/83	Attended Conference On Behalf Of Client √	12.00
06/06/83	Attended Conference On Behalf Of Client √	15.00
06/29/83	Drafted Letter On Behalf Of Client √	6.60
06/07/83	Appeared In Court On Behalf Of Client √	50.00
06/14/83	Drafted Notice/Hearing Notice On Behalf Of Client √	20.00
06/06/83	Long Distance Telephone Charges √	2.90
	New Charges	166.50
	New Balance	$1,625.45

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STATEMENT

Dennis Warren
5617 Jay Road
Boulder, CO 80302

Acct. No. 445
Services thru 07/31/83
RE: 83-92 DelCocai
Page 1

Date	Description	Amount
	Previous Balance:	$1,625.45
07/08/83	Telephone Call On Behalf Of Client	4.00
07/13/83	Photocopies At $.25 Each	1.50
07/08/83	Long Distance Telephone Charges	3.70
	New Charges	9.20
	New Balance	$1,634.65

Please Return Top Portion of Statement With Your Payment.

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

DATE: September 26, 1983

TO: Judge Van Sickle
Attention: Helen Monteith

FROM: DONALD P. LAY, Chief Judge

IN RE: C1-83-4-01. U.S.A. v. Dennis Warren

Helen, I am returning the CJA voucher again in the above case. Mr. Snyder has the numerical amounts (dollars) in his itemization for the various amounts of time spent—we need to have the number of hours or portions of hours in each instance; granted, I suppose we could figure it out by doing the division, but we don't have that kind of time; therefore, would you please have him resubmit his itemization so that the amount of time is broken down into the various categories of "in court" and "out of court", and then put his out-of-pocket expenses in a separate sheet. The itemization of time, of course, should then conform with the total number of hours on the front of the voucher at the $30 and $20 rate.

Thanks.

/s/ June Boadwine

Encl.

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October 6, 1983

Helen Monteith
Federal Building
3rd Street & Rosser Avenue
Bismarck, ND 58501

Re: United States of America vs. Dennis Warren

Dear Helen:

I am in receipt of the letter of September 26, 1983, from the Eighth Circuit Court of Appeals, in which our latest attempt to justify our time and expenses for Dennis Warren has again been set back. This letter is for the purpose of responding to that letter.

In the first place, I am appalled by the amount of money which the federal court pays for indigent criminal defense work. The reason that so few attorneys in Bismarck accept this work is for that exact reason. We have, up to this point, still accepted the indigent appointments, because of a duty to our profession, and the fact that nobody else will do it.

Now, however, not only are we paid an amount of money which does not even cover our overhead, but we have to go through extreme gymnastics even to receive the puny amounts which the federal courts authorize for this

work. We have sent you everything we have concerning our representation, and I am not sending you anything else. You can take it or leave it.

Further, I am extremely disgusted by the treatment of us by the Eighth Circuit in this case, and you are instructed to remove my name from the list of attorneys who will accept criminal indigent defense work. I have simply had it.

Thank you for your time and attention.

Very truly yours,

BICKLE, COLES AND SNYDER, CHARTERED

/s/ Robert J. Snyder
Robert J. Snyder
Attorney at Law

UNITED STATES COURT OF APPEALS
Eighth Circuit

Donald P. Lay
Chief Judge
P. O. Box 30908
St. Paul, Minnesota 55175

November 3, 1983

The Hon. Bruce M. Van Sickle
United States District Judge
P. O. Box 670
Bismarck, North Dakota 58501

Re: C1-83-4-01. U.S.A. v. Dennis Warren.

Dear Judge Van Sickle:

I am enclosing copies of recent correspondence of attorney Robert J. Snyder to your secretary, Helen Montieth, and from your secretary to my administrative assistant,

June Boadwine. It is unfortunate that this matter now requires additional time, but because of the responses made by your secretary and Mr. Snyder, it is necessary for me to intervene.

I consider Mr. Snyder's letter to your secretary as being totally disrespectful to the federal courts and to the judicial system. It demonstrates a total lack of respect for the legal process and the courts.

The Criminal Justice Act was passed as a response to the inadequacy of a prior system which did not award any type of reimbursement of expenses or time spent by a lawyer. I'm confident it was true when you were in practice as it was when I represented indigents that the bar performed without any reimbursement of either expenses or attorneys' fees. This pro bono work was considered to be a part of our professional responsibility. The CJA was never intended to provide a reasonable attorney fee, only to provide funds to cover overhead and expenses.

Regardless of an attorney's view as to whether he feels obligated to provide pro bono work, my concern now is related to the apparent refusal of the attorney involved in this case to comply with the Criminal Justice Act and the guidelines promulgated under it. In the original instance, Mr. Snyder failed to forward any time itemization, contrary to the statutory guidelines, and on that basis and based upon my direction to my administrative assistant, the claim for services was returned to you with the request that compliance be obtained. Mr. Snyder then itemized the amounts in dollars, but failed, as requested by the Administrative Office, to set forth the number of hours or portions of hours in each instance on his itemized schedule.

We were unable to ascertain whether he was charging time under his own fee schedule or that of the statute. In addition, he failed to itemize his out-of-pocket expenses on a separate sheet. Although these requirements may seem technical, under the Criminal Justice Act the federal government is dealing in millions of dollars and Congress requires proper itemization so that budgetary limitations may be accounted for in a proper manner.

As you know, processing these vouchers takes a good deal of time on my part, as well as on the part of every district judge who must approve them. If a district judge's staff is to assist, it is essential they understand the guidelines and require attorneys to comply with them. If a voucher is not properly submitted and checked by the district court, it requires a great deal of time on my part in getting ultimate approval of it by the Administrative Office. Volume VII of the Guide to Judiciary Policies and Procedures contains the guidelines. However, when a lawyer becomes disrespectful and refuses to follow the guidelines and refuses to cooperate with the court, then it is a more significant problem.

Mr. Snyder indicates that he would like to have his name removed from the list of attorneys who will be appointed to represent indigent criminal defendants. As far as the court in concerned, I will honor that request and I instruct you to remove his name from the list of attorneys who will be appointed in criminal cases. However, in view of the letter that Mr. Snyder forwarded, I question whether he is worthy of practicing law in the federal courts on any matter. It is my intention to issue an order to show cause as to why he should not be suspended from practicing in any federal court in this circuit for a period of one

year. This suspension, of course, will apply to his appearance in federal court in North Dakota. We will, of course, give Mr. Snyder an opportunity to respond before any final determination is made.

In view of Mr. Snyder's attitude and refusal to assist the court in processing this voucher under the guidelines, I am approving a fee for him only to the statutory limit and properly itemized expenses.

Before taking the steps noted above, I would appreciate your views on the matter.

Sincerely,

/s/ Donald P. Lay
Donald P. Lay

/j
Encls.

cc: Mr. Robert Snyder

Encls.

UNITED STATES COURT OF APPEALS
Eighth Circuit

Donald P. Lay
Chief Judge
P. O. Box 30908
St. Paul, Minnesota 55175

November 15, 1983

The Hon. Bruce M. Van Sickle
United States District Judge
P. O. Box 670
Bismarck, North Dakota 58501

Re: Mr. Robert Snyder (C1-83-4-01. U.S.A. v. Dennis Warren).

Dear Judge Van Sickle:

Thank you for your letter of November 9 relative to the above CJA matter. I appreciate your comments.

At this point, I feel that if Mr. Snyder wishes to write the court offering his apology to the court for his disrespectful comments, and assuring the court that he will in the future be willing to comply with the requirements of the CJA and the guidelines, I will then be willing to recommend to the court that the order to show cause not be filed and, as a result, become public record.

Should Mr. Snyder not choose to honor this request, it will then become necessary for me to have the show cause order issued. I would appreciate your contacting Mr. Snyder in this regard.

Best regards.

Sincerely,

/s/ Donald P. Lay
Donald P. Lay

/j

P.S. I am enclosing herewith the CJA20. I have approved a fee of $1,000 and expenses for copies of $23.25. I have deleted the sum of $43.60 for long distance calls because of Mr. Snyder's failure to comply with the request to identify the calls. DPL

UNITED STATES DISTRICT COURT
District of North Dakota
P. O. Box 670
Bismarck, North Dakota 58501

Bruce M. Van Sickle
Judge

December 12, 1983

The Honorable Donald P. Lay
Chief Judge
United States Court of Appeals
for the Eighth Circuit
Box 30908
St. Paul, Minnesota 55175

Dear Judge Lay:

I have had the problem of Mr. Robert Snyder in my mind, of course, ever since your first letter, and I have held off responding because Mr. Snyder had a juvenile matter to which he had already been appointed when this problem arose.

I have had two conversations with Mr. Snyder. He sees his letter as an expression of an honest opinion, and an exercise of his right of freedom of speech. I, of course, see it as a youthful and exuberant expression of annoyance which has now risen to the level of a cause. The second conversation was late Friday after the dispositional hearing on the juvenile. And I believe Mrs. Monteith talked to him today.

He has decided not to apologize, although he assured me he did not intend the letter as you interpreted it.

Yours truly,

/s/ Bruce M. Van Sickle
Bruce M. Van Sickle

(Filed December 22, 1983)

UNITED STATES COURT OF APPEALS
for the Eighth Circuit

Re: ROBERT J. SNYDER) ORDER TO SHOW CAUSE

On October 6, 1983, Robert J. Snyder, a duly licensed attorney in the State of North Dakota, requested the United States District Court of the District of North Dakota to remove his name from the list of attorneys who will represent indigent criminal defendants. His refusal to defend criminal indigents appears to be based partly on his contention that the attorneys' fees allowable to court-appointed counsel under the Criminal Justice Act, 18 U.S.C. § 3006A, do not afford reasonable compensation. Mr. Snyder also has refused to comply with the guidelines and forms required by the Criminal Justice Act for payment of attorneys' fees.

On November 15, 1983, as Chief Judge of this court, I instructed United States District Judge Bruce M. Van Sickle to remove Mr. Snyder's name from the list of attorneys in North Dakota who are eligible to be appointed to defend indigents in criminal cases.

In *Williamson v. Vardeman,* 674 F.2d 1211, 1215 (8th Cir. 1982), this court recognized the inherent duty and obligation of a lawyer, as an officer of the court, to represent indigents without fee. This court relied, in part, *on United States v. Dillon,* 346 F.2d 633, 635-636 (9th Cir. 1965), *cert. denied,* 382 U.S. 978 (1966), wherein the court stated:

> An applicant for admission to practice law may justly be deemed to be aware of the traditions of the

profession which he is joining, and to know that one of these traditions is that a lawyer is an officer of the court obligated to represent indigents for little or no compensation upon court order. Thus, the lawyer has consented to, and assumed, this obligation and when he is called upon to fulfill it, he cannot contend that it is a "taking of his services." Cf. Kunhardt & Company, Inc. v. United States, 266 U.S. 537, 45 S.Ct. 158, 69 L.Ed. 428 (1925).

In Powell v. State of Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932), the Supreme Court held, in a capital case where the defendant was unable to employ counsel and was incapable of making his own defense adequately because of ignorance, etc., that it was the duty of the court to assign counsel for him, and stated at page 73, 53 S.Ct. page 65:

> "Attorneys are officers of the court, and are bound to render service when required by such an appointment."

346 F.2d at 635 (footnote omitted).

In view of Mr. Snyder's refusal to carry out his obligations as a practicing lawyer and as an officer of this court, he is HEREBY ORDERED TO SHOW CAUSE within thirty days of this Order as to why he should not be suspended from practice in the federal district court, as well as in the United States Court of Appeals for the Eighth Circuit, for such period of time as his refusal to serve continues. Pursuant to Rule 46 of the Federal Rules of Appellate Procedure, Mr. Snyder may request a hearing on his response before the full court. He shall file his

response with the Clerk of the United States Court of Appeals for the Eighth Circuit in St. Paul, Minnesota.

IT IS SO ORDERED.

/s/ Donald P. Lay
Chief Judge

Dated December 20, 1983.

(Filed January 16, 1984)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Re: Robert J. Snyder

RETURN TO ORDER TO SHOW CAUSE

FACTS

The following is a history of the development of the present proceeding:

On March 14, 1983, the undersigned was appointed by the Federal District Court for the District of North Dakota, Southwestern Division, to represent, on an indigent basis, Dennis Warren, who was charged with approximately six counts relating to cocaine trafficking. The normal pre-trial work was performed, and a jury trial was held in Federal District Court, lasting one full week, May 2-6, 1983. Mr. Warren was convicted on all counts.

On August 9, 1983, the undersigned filled out and sent to the Clerk of the Federal District Court the standard federal claim for services and expenses. The total

amount of the claim was $1,898.55. A copy of the claim voucher and cover letter are attached hereto.

On August 17, 1983, Judge Van Sickle reduced the claim by $102.50, approved it, and forwarded the claim to the Eighth Circuit. A copy of Judge Van Sickle's cover letter is attached hereto.

On September 6, 1983, the administrative personnel of the Eighth Circuit returned the claim voucher, requesting itemized support for the claim. A copy of that letter is attached hereto.

On September 20, 1983, the undersigned forwarded to Federal District Court in Bismarck a complete set of his firm's itemized computer sheets for all work performed on the Warren case. A copy of the computer sheets and the cover letter are attached hereto.

On September 26, 1983, the undersigned received from the administrative personnel of the Eighth Circuit another letter rejecting the claim voucher and itemized information, stating that the information was insufficient due to the fact that the computer sheets billed in dollars instead of hours, and, also, because phone records for the requested phone expenses were not attached.

On October 6, 1983, the undersigned sent an admittedly strident letter, responding to the letter of September 26, 1983. A copy of that letter is attached hereto.

On November 3, 1983, the undersigned received from Chief Justice Lay a letter taking offense to the undersigned's letter of October 6, 1983. A copy of that letter is attached hereto.

Subsequent to November 7, 1983, the undersigned was shown a letter from Chief Justice Lay to Judge Van Sickle, in which it was stated that the entire matter would be dropped if the undersigned apologized for the [sic] his letter of October 6, 1983. No response was made by the undersigned.

On December 20, 1983, Chief Justice Lay caused to be issued an Order to Show Cause, which forms the basis of the present proceeding. A copy of the Order to Show Cause is attached hereto.

The undersigned now makes and files a Return to the Order to Show Cause, showing why he should not be suspended from practice before the United States Court of Appeals for the Eighth Circuit, and the courts thereunder.

ARGUMENT

The present proceeding was really initiated when the undersigned drafted and sent the letter of October 6, 1983. Had that letter not been sent, this proceeding would not be taking place. The letter was admittedly harsh in tone, but reflected the frustration of the undersigned with the indigent criminal appointment process as employed by the Federal Courts. This frustration stems from a number of sources.

First, the rates paid by the Federal Courts for indigent appointment, despite allegations to the contrary, do not cover the overhead of the attorney so appointed. This is one of the main reasons why so few attorneys can be found in this area to accept the federal appointments, as will be discussed below.

Second, apart from the actual rates themselves, the procedures which must be followed to collect the indigent appointment fees are oppressive.

In this case, the undersigned made a good faith effort to provide all justification in his possession for the fees and expenses charged. The computer sheets, attached hereto, which were forwarded to the Eighth Circuit in response to the request, are extremely detailed, and contain virtually every item of work and expense performed on the case. They were, quite simply, everything we had in our possession to justify the fee, yet they were rejected.

In addition, the undersigned was required to produce his firm's phone records to justify $43.00 in phone call expenses. In the first place, to go back over several months' phone records for this firm and find the calls in question would be prohibitively time-consuming, more time than would justify providing documentation for a $43.00 expense.

Even more importantly, however, this firm considers its telephone records to be privileged information, and it does not allow the records to be indiscriminately sent out of the office.

In response to the letter of the undersigned of October 6, 1983, the undersigned received the letter from Chief Justice Lay, dated November 3, 1983. The undersigned was, quite honestly, shocked by both its content and unveiled threat. It is interesting to note that the letter of Chief Justice Lay does not overly concern itself with the request of the undersigned to be removed from the panel of the indigent defense counsel. In fact, in the letter the Chief Justice specifically approves the request.

Instead, the letter entirely directs itself to what apparently is perceived as something in the vein of contempt on the part of the undersigned in his letter of October 6, 1983.

The undersigned wishes to state that he has nothing but the greatest respect for both the Federal Courts and the Federal Judiciary. However, the letter of October 6, does correctly state the deep feelings of the undersigned towards a process which is unfairly applied to a limited number of attorneys.

It is also interesting to note that had the undersigned simply apologized for the letter of October 6, 1983, apparently without withdrawing his request for removal from the panel of indigent defense attorneys, the present proceeding would not be taking place.

On December 20, 1983, Chief Justice Lay issued the Order to Show Cause, a copy of which is attached hereto, and to which this document is a response. Again the undersigned was shocked, because the ground for the Order to Show Cause was the undersigned's request for removal from the panel of indigent defense attorneys, something the undersigned, in reviewing the letter of Chief Justice Lay, did not consider to be a matter of offense. However, since specific grounds are being used for the Order to Show Cause, a reply is necessary.

The defense of Dennis Warren was not the first case that the undersigned has undertaken on an indigent basis in Federal District Court in Bismarck.

The records of the Clerk of the Federal District Court in Bismarck show that in the four-year period from Janu-

ary 1, 1980, through December 31, 1983, there were 99 indigent federal appointments for the District of North Dakota, Southwestern Division. Of those 99 appointments, the undersigned received eight, and the other two members of his firm received an additional seven.

Of the eight cases received by the undersigned, three were tried to juries. For the eight cases, the undersigned spent a total of 100.75 hours in court, and 115.53 hours out of court.

The panel of indigent defense counsel for the District of North Dakota, Southwestern Division, a copy of which is attached hereto, contains 88 names. If a strictly rotational appointment system were used for this panel, in the four-year period mentioned above the undersigned should have received 1.12 cases, instead of eight.

However, the panel itself is glaringly deficient in a number of ways. First, the panel was last revised in August, 1980. Among the names on the panel are Burton L. Riskedahl, who has been Burleigh County Judge for a number of years; Maurice R. Hunke, who has been a State District Judge for a number of years; Rick D. Johnson, who has been Solicitor General of the State of North Dakota for a number of years; Robert O. Wefald, who was elected Attorney General of the State of North Dakota in 1980; and John A. Zuger, Sr., who is deceased. One can imagine the number of attorneys who have established practice in Bismarck since August of 1980, who are eligible for the panel but not on it.

As significant as the names which appear upon the panel, are the names which do not appear upon it. The panel does not contain a large number of attorneys, some

of them among the most prominent in the Bismarck-Mandan area. The reason for their absence is easily found.

Attached hereto is a copy of the "Plan Pursuant to the Criminal Justice Act of 1964, as amended, for the United States District Court, District of North Dakota." If one turns to page 2 of the plan, *II. Sources of Names,* one finds the procedure by which attorneys appear on the panel of indigent defense counsel. The pertinent portion reads as follows:

> The State Bar Association of North Dakota, acting by and through its appropriate committee, has recommended a list of attorneys who, in the opinion of such Bar Association, are competent to give adequate representation to parties under the Act, and who are willing to serve.

The critical passages above are "competent to give adequate representation" and "willing to serve." If an attorney does not deem himself competent to act as counsel in a criminal case, his name does not appear on the panel. Further, if an attorney is not willing to serve as indigent defense counsel, his name does not appear on the panel. Given the rates allowable for indigent defense representation, it is readily apparent why a large number of attorneys are simply unwilling to serve.

If one strictly follows the guidelines as set forth in the above-described plan, the undersigned is doing nothing more than express his unwillingness to serve, as have a number of other attorneys. How, then, can the undersigned be singled out for suspension from practicing before the Eighth Circuit and the courts thereunder?

The undersigned has read *Williamson v. Vardeman,* 674 F.2d 1211 (8th Cir. 1982), which is cited in the Order to Show Cause, and has no great argument with the case itself. However, it should be noted that *Williamson* imposes a burden and obligation not only upon individual attorneys, but upon the *legal profession* itself to provide counsel to indigent defendants without adequate compensation.

If *Williamson* is to be applied, it should be applied equally to all practitioners of the legal profession, and not to an extremely small segment thereof who are both "competent" and "willing to serve" as indigent defense counsel in federal cases. In practice, the obligation and burden of representing indigents for less than adequate compensation falls upon a very small number of criminal defense attorneys, among them the undersigned, and excludes the large majority of practicing attorneys. Such a system is not just if that small minority, including the undersigned, is compelled to accept federal appointments, and subsidize its brethren who will not or cannot do so.

If the undersigned is to be compelled to continue to represent indigent clients in federal cases, then the compulsion must extend to all attorneys who practice within the Southwestern Division of the District of North Dakota, regardless of their willingness or competence to serve. The plan referred to above must be revised, all nongovernmental attorneys placed thereon, and the panel be appointed on a strictly rotating basis.

To compel the undersigned to serve, without extending the compulsion generally, and to sanction the undersigned with suspension if he refuses, without sanctioning

generally, is a taking of the undersigned's private property for public use without just compensation and a denial of due process of law, in violation of the Fifth Amendment to the United States Constitution.

Pursuant to Rule 46 of the Federal Rules of Appellate Procedure, the undersigned requests a hearing on this return before the full Court.

Dated this 12th day of January, 1984.

Respectfully submitted,

BICKLE, COLES AND SNYDER, CHARTERED

219-½ East Broadway
P.O. Box 2071
Bismarck, North Dakota 58502-2071

/s/ Robert J. Snyder
By: Robert J. Snyder

Transcript of Proceedings
No. 84-8117 *In Re Attorney Robert J. Snyder*

Chief Judge Lay: Docket No. 84-8117 *In Re Attorney Robert J. Snyder.* I take it Mr. Snyder is in the courtroom?

Mr. Snyder: I am Robert Snyder your honor.

Judge Lay: Are you appearing pro se, or do you have someone representing you?

Mr. Snyder: I am appearing pro se, however, I have with me Mr. David Peterson who appears not as my counsel, but as a representative of the Burleigh County Bar

Association, and he wishes the opportunity to address the court as well.

Judge Lay: Well, we will determine whether that will be allowed. Do you wish to make a statement to the court?

Mr. Snyder: May it please the court, I believe that my position on this matter has been adequately stated in my return. I guess, just by way of emphasis, the specific grounds for the order to show cause on this suspension is my request to be removed from the panel of attorneys who will accept indigent appointments for the Southwestern Division of the District of North Dakota. In my return I attached a copy of the plan for the District of North Dakota, and in that plan the panel of attorneys is comprised of attorneys who are both competent and willing to serve. While I have, in my opinion, done nothing more than declare my unwillingness to appear on the panel any more. And I don't believe that I have done anything untoward and I am in fact following the guidelines of the plan.

Judge Lay: You are following which guidelines?

Mr. Snyder: The guidelines of the plan—I have it attached to my return—the Plan of the United States District Court for the District of North Dakota pursuant to the Criminal Justice Act of 1964 as Amended.

Judge Lay: Mr. Snyder, I ask you, in essence, your return is based upon the concept that you feel that non-sufficient numbers of lawyers are participating in the plan and that your law firm is getting too many of these cases—

Mr. Snyder: That's correct.

Judge Lay: (Continuing) and that you are being disfairly treated?

Mr. Snyder: Well that's obvious, your honor, if you look at Mr. Peterson's resolution or the resolution that was prepared by the Burleigh County Bar Association, there are 276 licensed attorneys, non-governmental—

Judge Lay: Sight assumed all that is true, is that the reason that you do not wish to be available to do this kind of work in the courts?

Mr. Snyder: Partly.

Judge Lay: What's the other reason?

Mr. Snyder: Because of the fees that are paid.

Judge Lay: I was going to come to that. That is a matter you set out in your letter of October 6, to the district court; that the reason that you didn't want to do this work any more is because you felt you are "appalled by the amount of money which the federal court pays for its criminal defense work, and not only are we paid an amount of money which does not even cover our overhead, but we have to go through extreme gymnastics even to receive the puny amounts which the federal courts authorize for this work. We have sent you everything we have concerning our representation and I'm not sending anything else. You can take it or leave it." Now these are the reasons that were given, and those are reasons that you wish not to continue, is that right?

Mr. Snyder: That is part of the reason, and of course, the other reason is set out in my return. I have done—my firm has done fifteen percent of the cases over the last four years.

Judge Heaney: How many members are in your firm?

Mr. Snyder: Three.

Judge Heaney: And how long have you been in practice?

Mr. Snyder: Since 1977.

Judge Heaney: And how long have your partners been in practice?

Mr. Snyder: The same. We all started at the same time.

Judge Heaney: And how many cases did you hear—or do you plan to serve in 1983?

Mr. Snyder: Possibly two or three.

Judge Heaney: Two or three in 1983? And did any of those go to trial?

Mr. Snyder: The one that this proceeding is about.

Judge Heaney: And how long did that trial take?

Mr. Snyder: One full week.

Judge Heaney: One full week. And the other two cases how much time did you spend on them?

Mr. Snyder: I really don't recall, Your Honor. They were not major cases.

Judge Heaney: A day or two?

Mr. Snyder: Possibly.

Judge Heaney: And you think that this is burdensome on you to spend perhaps as many as two weeks out of fifty-two weeks representing indigent criminals?

Mr. Snyder: Your Honor, the system is not being fairly applied. Our firm has handled fifteen percent of

the cases. If the court is going to compel me—with the threat of suspension—if the court is going to compel me to serve on an indigent basis, then I think the court must compel everyone to serve.

Judge Heaney: Well, I guess I wasn't asking that question. I guess I was asking you whether you felt that you are really being put upon in your being asked as part of your professional responsibilities to spend a couple of weeks, at the most, to represent indigent criminals at least when you get your expenses and perhaps get enough to cover the overhead in the office?

Mr. Snyder: If everyone is spending a couple of weeks, then I don't mind spending a couple of weeks.

Judge Heaney: You haven't made any allegation of poverty and that you otherwise are making an adequate living for yourself—

Mr. Snyder: (Interposing) I'm not getting rich off the practice of law. One thing that's been brought up here in the order to show cause, or maybe it was in one of the letters that Judge Lay wrote, was that the rates that are paid are designed to merely cover overhead. Well if that is the design, it doesn't even do that.

Judge Lay: This court doesn't set those rates. It's set by the Congress of the United States.

Mr. Snyder: I understand that. But I understand also that there is a bill before the Congress to raise the rates and perhaps this court could do some lobbying—

Judge Lay: This court doesn't lobby.

Mr. Snyder: Well, perhaps it could point out to the Congress that there is a real problem.

Judge Lay: The Judicial Conference of the United States has supported that it increase its fees for that for a long time. But you know before the Criminal Justice Act was passed, all of the judges now—lawyers at that time—worked for nothing. We paid our expenses out of our own pockets. It was considered to be an implied obligation of our license to practice law, as I think it's considered to be today.

Mr. Snyder: I believe that's one of the reasons the Act was passed in the first place; to compensate lawyers because they were having problems getting people to do it then.

Judge Lay: But it was recognized that it would not fully compensate, nor was it intended to be reasonable compensation.

Mr. Snyder: Well, if—I have no problem with the compensation remaining the way it is if it is applied to everyone. But the way it is now, out of 256 lawyers there are 30 in the Southwestern Division that are appointed, twenty to drug cases; ten to more serious felonies; and four or five to murders and rapes—and I am one of the four or five. So if there is going to be a compulsion to me to take these cases then I think the court must extend that compulsion to everyone, whether or not they are willing to serve, whether or not they are competent to serve.

Judge Arnold: Let me change the subject a little bit, Mr. Snyder, and ask you something about a letter that you wrote: a letter dated October 6, 1983, to Helen Monteith. I guess I have a copy of it before me and that's the letter where you say that you have to go through extreme gymnastics even to receive the puny amounts which the federal

courts authorize for this work. We have sent you everything we have concerning our representation and I am not sending you anything else. You can take it or leave it. Further I am extremely disgusted by the treatment of us by the Eighth Circuit in this case, and you are instructed to remove my name from the list of attorneys who will accept criminal indigent defense work. I have simply had it." I gather Ms. Monteith is a secretary to Judge Van Sickle?

Mr. Snyder: That's correct.

Judge Arnold: I am bothered by the tone of the letter.

Mr. Snyder: It's harsh. I guess I was—I was fed up at that point, and I guess just by way of expanding on this—this doesn't appear in any of the documents that I filed, but I was appointed on this case on an indigent basis. During the course of the trial it became apparent that my client had misrepresented his financial situation and actually could have afforded to hire a lawyer and was, in fact, fined $35,000 as a part of his sentence. Not only that, but he hired another lawyer to do the appeal. Now, when I submitted the bill, I went through our computer time sheets, I got everything down and that must have taken me a couple of hours there. We sent it in—that wasn't good enough. We then sent in our computer sheets themselves, and that wasn't good enough. But, I guess the thing that really got me—

Judge Lay: Let's stop right here and analyze why it wasn't good enough.

Mr. Snyder: Because it bills in dollars instead of hours.

Judge Lay: That's right. And the regulations put out by the Congress of the United States and the Administrative Office, not by the Eighth Circuit, require you to submit your hours that you have spent on a case so that they can be equated with the statutory fees. Now, you were asked to do that on the first occasion. On the second occasion you sent it back to Ms. Monteith with the computer time sheets, not equated with hours, and then you penned a note—a handwritten note to her, which doesn't appear in the matter—in the letter that you filed of record, that says "these are the charges for Warren, but the amounts aren't exactly right due to our computer's lack of the right money codes.

Mr. Snyder: Right.

Judge Lay: Now how does that help me or my administrative people in figuring out the amount that you're due under the statute.

Mr. Snyder: Well, Judge, if there would have been some question I guess you could have billed—I think there was only like a $200 difference between what we billed and what the computer sheet said. If you wanted to do that then I guess bill—give us the amount that the computer said. But that wasn't really what got me. What got me was a request that we submit our phone records to justify—

Judge Lay: A requirement of the guidelines as well.

Mr. Snyder: Well, your honor, to go through several months of phone records and find those calls—in the first place, we would not send our phone records out of the office. We consider them privilege information, so what would have had to have been done was a secretary to go

through the records and take a magic marker and line out everything except the phone calls—

Judge Lay: Mr. Snyder, there are over 2,000 representations a year in this circuit by attorneys. The last seventeen years every attorney in this circuit has complied with these guidelines and submitted what Congress requires to set out the itemization of the phone bill: where it was made; from whom; on what date; and the amount. No attorney has ever complained, that I have ever known, in complying to that guideline until you have come along at this time.

Mr. Snyder: But do you think that's a basis for suspension?

Judge Arnold: Let me interrupt a minute, Mr. Snyder. I want to get back to this letter I mentioned, but I don't understand the phone call business. Now are you saying that you are required not only to itemize—when I practiced law, of course when I sent a bill I itemized my phone calls. I said: January 1, to New York City—$2.00.

Mr. Snyder: That's what is in the computer records.

Judge Arnold: All right. And are you saying that the court required you not only to itemize, but to submit copies of the actual bills from the telephone company.

Mr. Snyder: That's what was wanted.

Judge Lay: You were simply asked to itemized, weren't you?

Mr. Snyder. The itemization—

Judge Arnold: What appears on your bill here is—it says: April 20, 1983, long distance telephone charges—

$2.65. It doesn't say from where, or to where, or to whom the calls were placed. So, to me, that's all you needed to—and I don't know as much about the regulations as some others do—but, isn't it reasonable to ask you to say to what city the call was placed?

Mr. Snyder: Well, your honor, those—I wouldn't even have any independent recollection of that, because that's the way our computer keeps the time.

Judge Arnold: You don't keep files showing these on your paying clients?

Mr. Snyder: We bill our paying clients the same way.

Judge Arnold: They don't ask you: "Well, who did you call on April 20?"

Mr. Snyder: No.

Judge Arnold: All right. Well, let me go back to the other question I had, which is the letter of October 6. And, I guess, the letter seems somewhat troubled. (Inaudible)

Mr. Snyder: Possibly.

Judge Arnold: I am asking you, sir, if you are prepared to apologize to the court for the tone of you letter?

Mr. Snyder: That is not the basis that I am being brought forth before the court today. Is not an apology. And I could have apologized when an apology was demanded from Judge Lay, and I declined—

Judge Lay: Was requested.

Mr. Snyder: Was requested. Well, it was apologize or I will bring an order to show cause why you should not

be suspended, so I guess I don't know if that's much of a request. But, I didn't apologize then, and I'm not apologizing now, and, by the way, that letter was not sent to the Eighth Circuit, it was sent to Helen Monteith.

Judge Arnold: All right. I just want to get this clear, that you are declining to apologize for the letter of October 6.

Mr. Snyder: I am.

Judge Arnold: All right, sir.

Mr. Snyder: But that's also not the basis of this proceeding. The basis—

Judge Arnold: It's the basis of another proceeding. Because you have a duty as a lawyer to behave yourself in a respectful fashion, just as the courts have a duty to try to understand the problems of bar and to behave with courtesy towards members of the bar. And I have to say, that I think you are failing in your duty.

Mr. Snyder: Will the court have any other questions?

Judge Heaney: I have one question. And I would join in what Judge Arnold has to say, and would add that you appear to be to me a young man with spirit, and intelligence, and competence, and I believe if you could combine that with some humility and some concern for your obligations as a lawyer, you could be successful, but if you aren't, then, you probably won't wind up being a credit to your profession. Having said that, you raised an issue which probably doesn't concern this proceeding, but that is of interest to me, and that is, when it was determined that the defendant had money and had resources, did you go to Judge Van Sickle and report that to him? Because at that

point it seems to me that it really was incumbent on the court to change the nature—

Mr. Snyder: Well, I didn't have to go to—

Judge Heaney: That you were entitled to be paid a reasonable fee for having represented that person. If he could be fined for $35,000.00—has he paid the $35,000.00?

Mr. Snyder: I don't know. The case was turned over to another lawyer on appeal and I have had no more involvement with it. But as far as Judge Van Sickle knowing—

Judge Heaney: Then that should have been pursued and you should have gotten, under those circumstances, a reasonable fee for the work that you've done on the basis of your regular hourly charge, and we would have backed you up to the hilt on that kind of approach.

Mr. Snyder: Well, I didn't have to tell Judge Van Sickle because it came out in open court and he was right there. But I didn't feel it my place to really start doing that in the middle of the trial. I guess I was representing the guy, and what would have happened there is I would have driven a wedge between my client and myself if I would have said "Hey, let's have this guy honey up some money to me. So, there wasn't, at that point, there really wasn't much that could be done. But, it seems to me we're getting far afield here. The question is, can I be suspended from this court for my request to be removed from the panel of attorneys. And—

Judge Lay: The reasons that you request to be removed are interrelated, and the reasons are, as you have indicated, you felt that you get an unfair share, but as you

originally indicated, you didn't feel the fee was right. You felt the Eighth Circuit has abused you because we asked you to comply with the guidelines on two occasions and you refused to do it. And, now the (INAUDIBLE), Mr. Snyder, I have great respect for every lawyer that practices law in this circuit and this country. And, we were all lawyers ourselves at one time. I don't think I've ever stood before a court, as you're standing here, showing the disrespect that you are showing to this tribunal. You've got a chip on your shoulder. Mad. I've given you every opportunity to simply apologize to the court and to indicate that you will continue with your criminal law obligations. That's all I asked Judge Van Sickle to ask you. You refuse to do that. In the order to show cause, which is very simply and succinctly stated, I gave you every opportunity to purge—you wouldn't even have had to bother to the extents of coming down here—by simply writing to the court and saying "yes, you would continue to serve in pro bono obligations when asked and that you will continue to comply with the guidelines." That's all you have to do. That's all you have to do at any time in order to be accepted in this court on good standing. Your refusal to do that will probably lead to your suspension, not only in this court, but in the federal district courts. And, it seems to me, that's the road you wish to travel. And you're—I just caution you, that you're choosing that road yourself. The court isn't directing you to. But because you've got this chip on your shoulder, against the system, you feel that's what you want. You may get the opportunity to pay the price.

Mr. Snyder: Your Honor—

Judge Lay: I think you ought to consider that very carefully. . . . The question that you raise about the inequi-

ties of the North Dakota plan is a concern to this court, and I am making an independent investigation. But the way you handle that is not by being contemptuous and disrespectful to the court, but by simply sitting down with Chief Judge Benson and going to the bar and working something out on a more equitable basis. I am certain that's going to be done. But, the point is, the question whether any lawyer practices in this circuit as a pro bono obligation—not every lawyer is competent to serve. This court will not tolerate the appointment of incompetent counsel to try indigent cases. That in itself, by itself, requires that only a small segment of the bar—. Other lawyers who aren't asked to serve, because they are not competent to try cases, are asked to serve in other capacities, and do other types of pro bono work. If you have that capacity and you appear as a trial lawyer, that is an implied obligation of your license to practice law. If you persist in the idea that you can't carry out those obligations, and those duties, then we have no alternative. But, you hold the key in your hand. I think you really need counsel before you make that determination.

Mr. Snyder: Your honor, I have talked to a lot of people about this present proceeding, and quite honestly, the reaction in Bismarck is that everyone is aghast at it. You've seen some of the correspondence that I have submitted: the resolution by the Burleigh County Bar; the Affidavit from Judge Glaser; the letter from the State Bar Association. I solicited none of that. That was done on their own behest. And, if I'm suspended, I can tell you that the situation in Bismarck will become worse than it already is, because, I don't think you're going to find anybody that will take a case.

Judge Lay: Well then, maybe they all will be suspended from practice.

Mr. Snyder: Maybe.

Judge Lay: Well, I would—I think just administratively, I'll give you ten days, Mr. Snyder, if you wish to write a letter to the court and purge yourself of the concern of the court—all it is is a simple statement that you will take pro bono assignments of the federal courts and that you will comply with the guidelines if you are asked to do so. If you choose not to do that, then simply notify the court and then we'll take it upon ourselves to so act. I suggest that you counsel with someone before you write your letter in defiant or disrespectful terms.

Mr. Snyder: You honor, as far as I would again emphasize that, according to the plan for the District of North Dakota, if I am not willing to serve, I need not serve, and I need not give any reason according to that plan either.

Judge Lay: That isn't the plan of the Eighth Circuit.

Mr. Snyder: It is the plan of the District of North Dakota, the court in which I am appointed on these cases.

Judge Arnold: Let me say one other thing, Mr. Snyder, and that is, when you are thinking about whether to write any further letter, I would like you to consider also whether you might change your position with respect to the letter of October 6.

Mr. Snyder: Does the court wish to hear Mr. Peterson at all?

Judge Lay: Yes.

Mr. Peterson: May it please the court, that I thank you for allowing me to address you on this matter, just briefly, and I do appear here today at the request and direction of the Burleigh County Bar Association, which is the county bar association that Mr. Snyder is a member of, and has been in good standing since 1977. Mr. Snyder and two of his classmates started in a law practice the hard way. They opened up their own office—the three of them —and have built a good reputation as good practitioners, good trial lawyers, and they have been actively involved in a number of community projects and bar association projects and trial attorney projects during the entirety of their practice. The Bar Association heard through the federal courts office in Bismarck about the order to show cause directing Mr. Snyder to appear here, and it was the Bar Association, then, that asked Mr. Snyder to come to the regular meeting that we had most recently and tell us what had gone on, and what the order to show cause involved. There was considerable discussion—

Judge Lay: Did he tell you that he refused to comply with the statutory guidelines and that he told the court that he'd had it up to here and he wasn't interested in complying with it.

Mr. Peterson: Yes, your honor, there was a full discussion of all of the things that the court has addressed to him. And those things are of concern to me as an older practitioner, as well.

Judge Lay: I don't think you would do that, would you Mr. Peterson?

Mr. Peterson: Well, not anymore, Your Honor. I may have at a younger age, but now I guess I would put

the letter in the drawer over the weekend and then maybe redraft it on Monday. But our discussion went beyond that, and the facts and figures that are recited in the Resolution of the Bar Association shows, unequivocally, that Mr. Snyder and his partners have undertaken a far greater load than any other lawyer in our association, and perhaps in our state, and they certainly have given pro bono work, and they have given a great deal more—fifteen percent of the total cases in the last three years they have handled. We believe that they they have shown, and Mr. Snyder particularly, has shown that he is a responsible member of the bar, and I served, your honor, as an assistant United States Attorney for four years, from 1972 to 1976, and this same plan was in effect at that time and unfortunately, the panel of lawyers which is currently in the system, does not include more than about one-third of the total lawyers in the Southwestern Division. And I know, having now practiced in that division for some fifteen years, that there are a lot of lawyers in that division who are good, competent, capable trial lawyers who have told the court when the call is made—that is how they set the panel up—the call is made to the lawyers: do you feel competent to serve and do you want to serve? Because that is what the particular plan says. And there's a lot of those good, competent trial lawyers who have told the court, and said, no, we don't choose to serve. And because they have told the court that, the panel is then—it does not include them. And, unfortunately, I think it's unfair to the rest of them who then do choose to serve because they get an inordinate amount of it. And just as Judge Heaney points out, that perhaps two weeks of time at indigent cases is not an undue burden, but I think that the point is, that many

lawyers are not taking any burden, and their (sic) not doing any pro bono work. Mr. Snyder, in addition to taking this criminal indigent defense work for the federal courts, also serves on several state bar association pro bono panels and the lawyer referral service for divorce clients, at a certain fee. The reason that the Burleigh County Bar directed that I come here and file a Resolution, a copy of which I did file this morning, was to express our, I guess, to express the concern that we have about the plan that currently is in effect in North Dakota. We think it ought to be reviewed and revised.

Judge Lay: I can assure you—

Mr. Peterson: And we believe that the panel, the method of selection of the panel and the updating of the panel, which has not been done since 1980, needs to be done. And to respectfully request that the court not choose to suspend Mr. Snyder—

Judge Lay: Mr. Peterson, let me just suggest to you that I am confident that the plan will be revised and I am confident that it will be revised to the extent that—to express that every lawyer that is in this area has within their obligation in practicing law, explicit within their license to practice law, a duty to render pro bono work. I think that would be the cost of any plan that would come forth. So that would cover all lawyers who are competent. Now our problem is that Mr. Snyder, at least at this point, has taken a position that he will not participate in any plan, because he no longer wants to be on that list.

Mr. Peterson: Your Honor, as I understand Mr. Snyder's position, if the plan is revised and is equally distributed to every lawyer—

Judge Lay: He was asked—

Mr. Peterson: Well, I am not sure if he was asked that direct question.

Judge Lay: Maybe he could counsel with you. I think that would be a good suggestion.

Mr. Peterson: I think that—it's my feeling, in my talking with Mr. Snyder, that if the plan is revised and all lawyers have the same type of obligation, that he will be willing to serve, as he has indicated in the past.

Judge Lay: And comply with the guidelines?

Mr. Peterson: I am sure that he will, your honor.

Judge Lay: And deal with the court respectfully.

Mr. Peterson: I would certainly encourage him to do that.

Judge Lay: Don't you sense that Mr. Snyder could have obviated this whole proceeding by simply suggesting that in the first place?

Mr. Peterson: I suspect that that's true, your honor. And as I said, age sometimes tempers one somewhat.

Judge Lay: We are ready to give him ten days, administratively to—

Judge Heaney: Mr. Peterson, I would like to add just this, and that is, I would hope that you would be working with your bar association and the federal district judges to develop a plan which not only will be acceptable to them, but one in which your members can participate. Now, whether—I don't know whether you have enough of a vote there to have a public defender, part-time public defender

—perhaps not. But if not, we are going to have to come up with some kind of plan, and if the bar gives its support, then it's going to work.

Mr. Peterson: Well, your honor, I can assure you—it just happens that I am a candidate for the position of president-elect of the state bar association at our annual meeting this year. And I can assure you that the present president and myself, if I should become the president-elect, both share a concern over the plan that is currently in effect, and we will work with the courts in order to implement a plan which I think would be fair to all lawyers in our state.

Judge Lay: Just on the assumption that Mr. Snyder will exercise some judgment in this matter, and consult with you, or someone like you. I want to make it clear to Mr. Snyder what it is the court is allowing you ten days lapse here, a period for you to consider. One is, that, assuming there is a general requirement for all competent lawyers to do pro bono work, that you stand willing and ready to perform such work and will comply with the guidelines of the statute. And secondly, to reconsider your position as Judge Arnold has requested, concerning the tone of your letter of October 6. I think that's all we wish to hear about and if you choose not to take any action, you are to so notify the court within ten days.

Mr. Peterson: Thank you, Your Honor.

(Received February 23, 1984)

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February 22, 1984

Clerk
United States Court of Appeals
For the Eighth Circuit
525 Federal Courts Building
316 North Robert Street
St. Paul, MN 55101

Re: Robert J. Snyder-Misc. 84-8017

Dear Sir:

In response to the oral demands made by the Court to the undersigned at the hearing on the Order to Show Cause, held in St. Paul on February 16, 1984, the undersigned responds as follows:

If and when a new Plan for the implementation of the Criminal Justice Act in the State of North Dakota is enacted, the undersigned will enthusiastically obey its mandates, just as he has obeyed the mandates, or lack thereof, in the existing Plan.

Further, the undersigned states that he will make every good faith effort possible to comply with the Court's guidelines regarding the payment of attorney's fees and expenses.

Thank you for your time and attention.

Very truly yours,

BICKLE, COLES AND SNYDER, CHARTERED
/s/ Robert J. Snyder
Robert J. Snyder
Attorney at Law
RJS/cjm

cc: Judge Van Sickle
Judge Benson
Dewey Kautzmann

UNITED STATES COURT OF APPEALS
Eighth Circuit

Donald P. Lay
Chief Judge
P.O. Box 30908
St. Paul, Minnesota 55175

February 24, 1984

Mr. Robert J. Snyder
Bickle, Coles and Snyder
Attorneys at Law
P.O. Box 2071
Bismarck, North Dakota 58502-2071

Re: Order to Show Cause. Misc. No. 84-8017.

Dear Mr. Snyder:

The clerk has forwarded to me a copy of your letter you have written to the court indicating that you will continue to offer your services for pro bono representation under the Criminal Justice Plan.

The court expressed its opinion at the time of the oral hearing that interrelated with our concern and the issuance of the order to show cause was the disrespect that you displayed to the court by way of your letter addressed to

Helen Montieth, Judge Van Sickle's secretary, of October 6, 1983. The court expressly asked if you would be willing to apologize for the tone of the letter and the disrespect displayed. You serve as an officer of the court and, as such, the Canons of Ethics require every lawyer to maintain a respect for the court as an institution.

Before circulating your letter of February 23, I would appreciate your response to Judge Arnold's specific request, and the court's request, for you to apologize for the letter that you wrote.

Please let me hear from you by return mail. I am confident that if such a letter is forthcoming that the court will dissolve the order.

Sincerely,

/s/ Donald P. Lay
Donald P. Lay

cc: Chief Judge Benson
Judge Van Sickle
Mr. Maland, Clerk's Office

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February 27, 1984

Chief Justice Donald P. Lay
c/o Office of the Clerk

United States Court of Appeals
For the Eighth Circuit
525 Federal Courts Building
316 North Robert Street
St. Paul, MN 55101

Re: Robert J. Snyder-Misc. #84-8017

Dear Chief Justice Lay:

I am in receipt of your letter dated February 24, 1984. Pleased be advised that my letter of February 22, 1984, entirely states my position concerning this matter.

I cannot, and will never, in justice to my conscience, apologize for what I consider to be telling the truth, albeit in harsh terms. You must therefore search your conscience and determine what course of action will be serve the interests of justice and the administration of the Eighth Circuit.

It is unfortunate that the respective positions in the proceeding have so hardened. However, I consider this to be a matter of principle, and if one stands on a principle, one must be willing to accept the consequences.

Thank you for your time and attention.

Very truly yours,

Bickle, Coles and Snyder, Chartered
/s/ Robert J. Snyder
Robert J. Snyder
Attorney at law
RJC/cjm

cc: Paul Benson
Bruce Van Sickle
Dwight C. H. Kautzmann

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 84-8017

In the Matter of:)
Attorney Robert J. Snyder.)
On Order to
Show Cause.

Submitted: February 16, 1984
Filed: April 13, 1984

Before LAY, Chief Judge, HEANEY and ARNOLD, Circuit Judges.

LAY, Chief Judge.

This case comes before us on an order issued to attorney Robert Snyder of Bismarck, North Dakota, to show cause why he should not be suspended from practice in the federal courts. Attorney Snyder has been cited: (1) for his refusal to continue to perform services in indigent cases under the Criminal Justice Act (CJA) 18 U.S.C. §3006A (1982); and (2) for his disrespectful refusal to comply with the guidelines under the CJA relating to the submission of expenses and attorney fees.

Facts.

On March 14, 1983, Attorney Snyder was appointed by Judge Bruce Van Sickle of the District of North Dakota to represent an indigent defendant under the CJA.

There is no issue concerning his services being performed competently. After the proceedings, pursuant to § 3006A (d)(4) of the CJA, Attorney Snyder submitted to the district court a claim for services and expenses in the amount of $1,898.55. On August 17, the district court judge reduced the claim by $102.50 and approved the modified request.

Under the CJA, the chief judge of this court must review and approve any expenditures for compensation in excess of the $1,000 limit. 18 U.S.C. § 3006A(d)(3). Snyder's application was deficient in that the CJA requires an attorney to attach a memorandum of hours expended and an itemized list of expenses.[1] Snyder did not attach the necessary information to his application. Accordingly, his application was returned to the district court with the request that Attorney Snyder provide the proper attachments. Thereafter, Snyder returned the application to the secretary of the district judge with a monetary, not an hourly, breakdown of his time and again without the requested itemization of expenses.[2] Once again his application was returned by the chief judge with the notation that compliance with the CJA guidelines was still necessary to process the application.

Snyder then sent to the ditsrict judge's secretary a letter, dated October 6, "for the purpose of responding to"

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1. *Guidelines for the Administration of the Criminal Justice Act,* Ch. 2 § 3, Vol. VII, Guide to Judiciary Policies & Procedures.

2. Snyder's note accompanying the returned application stated that "the amounts [on the time sheet] aren't exactly right due to our computer's lack of the right money codes."

the chief judge's request. Snyder stated that he was "appalled" at the small amount paid to attorneys for indigent criminal defense work. He indicated his displeasure at the "extreme gymnastics" required to receive "puny amounts." He then stated to the court: "We have sent you everything we have concerning our representation, and I am not sending you anything else. You can take it or leave it." Snyder concluded his letter by stating that he was "extremely disgusted" by the treatment of him by the Eighth Circuit, that he wished to be taken off the list of attorneys willing to accept appointment in indigent cases, and that he had "simply had it."[3]

Upon receipt of this information, the chief judge requested the district court to confer with Snyder and to determine if Snyder would retract his disrespectful remarks to the court. Snyder refused. On December 22, 1983, this court issued an order to show cause why he should not be suspended from the practice of law in the federal courts for his refusal to offer services under the CJA and to comply with relevant guidelines. Snyder requested a hearing by the full court. *See* Fed. R. App. P. 46(c). The full court voted to refer the matter to a panel.

At oral argument, Attorney Snyder was requested once again to purge himself, as an officer of the court, by agreeing to accept appointment under the Act and by otherwise complying with the Act's guidelines. The panel also requested him to demonstrate in writing that he would be respectful in his relations with the federal courts and

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3. Based upon his refusal to comply with the CJA guidelines, Snyder was denied excess attorney fees and denied unitemized expenses.

to offer a retraction and sincere apology for his disrespectful remarks rendered in his letter of October 6. Snyder conditionally offered his continued services under the CJA, but contumaciously refused to retract his previous remarks or apologize to the court.

Attorney Snyder's Remarks to the Court

We first turn to Snyder's refusal to comply with the guidelines under the CJA for documentation of expenses. An integral part of Snyder's refusal to comply with CJA guidelines was his explicit statement of disrespect to the federal court. Snyder's conduct not only constituted disrespect but served as well to impede the orderly processing of attorney fee applications. In this direct sense he has served to impede the administration of justice.

As a member of the North Dakota bar and as a licensed practitioner in both the federal district court and the court of appeals, Attorney Snyder is bound by the ethical canons of the legal profession.[4] The relevant disciplinary rule states: "A lawyer shall not: . . . Engage in conduct that is prejudicial to the administration of justice." The Model Code of Professional Responsibility,

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4. The ethical code adopted by each state defines the professional responsibility of every attorney who is a member of that state's bar. However, as a federal court, our authority to discipline Attorney Snyder is defined in Fed. R. App. P. 46(c):

> Disciplinary Power of the Court over Attorneys. A court [of] appeals may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these rules or any rule of the court.

DR 1-102(A)(5).[5] Equally important is the recognition that an attorney must maintain the proper respect for the court as an institution. As stated in the Model Code:

> Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts, and financial support as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety.

Id. at EC 9-6.

As we will discuss, Snyder now conditionally has offered to serve in indigent cases and to comply with the CJA guidelines. However, in a letter to the court he has otherwise refused to retract or apologize for his disrespectful remarks to the court. He asserts that, although his remarks were "harsh," as a "matter of principle" no further statement is due the court. Letter from Robert J. Snyder to Chief Judge Lay (February 27, 1984).

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5. Although the American Bar Association, has recently adopted new Model Rules of Professional Conduct, the older Model Code of Professional Responsibility is still in effect in North Daokta (the state in which Attorney Snyder practices).

We find Snyder's present statement that he will conditionally comply with the guidelines not enough. His refusal to show continuing respect for the court and his refusal to demonstrate a sincere retraction of his admittedly "harsh" statements are sufficient to demonstrate to this court that he is not presently fit to practice law in the federal courts. All courts depend upon the highest level of integrity and respect not only from the judiciary but from the lawyers who serve in the court as well. Without public display of respect for the judicial branch of government as an institution by lawyers, the law cannot survive.[6] This is not to say that courts cannot and should not be subject to proper criticism and comment; however, when an attorney becomes disrespectful in response to a court's request that counsel comply with a congressional mandate, then we deal with a different mat-

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6. It is not respect for the judge personally that is required of attorneys; it is respect for the legal institution that the judge represents. As the Supreme Court of Pennsylvania recently stated:

> The "law" is given corporeal existence in the form of the judge. When carrying out the judicial function, the judge becomes a personification of justice itself. When presiding over any aspect of the judicial process, the judge is not merely another person in the courtroom, subject to affront and insult by lawyers. "The obligation of the lawyer to maintain a respectful attitude toward the court is 'not for the sake of the temporary incumbent of the judicial office,' but to give due recognition to the position held by the judge in the administration of the law." ABA Standards, The Defense Function, § 7.1, Commentary at 259. The judge *is* the court, and a display of insolence and disrespect to him is an insult to the majesty of the law itself.

Commonwealth of Pennsylvania v. Rubright, 414 A.2d 106, 110 (Pa. 1980).

ter. Without hesitation we find Snyder's disrespectful statements as to this court's administration of CJA contumacious conduct. We deem this unfortunate.

We find that Robert Snyder shall be suspended from the practice of law in the federal courts of the Eighth Circuit for a period of six months; thereafter Snyder should make application to both this court and the federal district court of North Dakota to be readmitted.

Implementation of the CJA in North Dakota

In further response to the show cause order Attorney Snyder alleges that the implementation of the CJA in North Dakota relies exclusively on an attorney list of those "willing" to serve. He therefore asserts that his refusal to accept any future CJA cases was in compliance with the plan and that he should not be censured for his lack of willingness to serve any more than the vast number of lawyers within the district who were not on the list by reason of their unwillingness to serve. Second, Snyder asserts that, because he lives in a rural area with a smaller population and his firm is willing to try criminal cases, whereas the vast number of lawyers in the district are not so willing, his firm receives a disproportionate number of appointments under the CJA. He also protests that the statutory fee under the CJA is inadequate to compensate him even for his overhead. Third, Snyder complains that the North Dakota list of attorneys willing to serve is not a current list; it does not include lawyers newly admitted to the bar and includes a number of lawyers who are deceased or inactive. He asserts, however, that he is now willing to continue to serve on the CJA panel provided that other qualified attorneys are placed

on the list for appointment. We find merit in Snyder's conditional offer of service.

This court has consistently recognized the duty of an attorney practicing in the federal courts, as an implied obligation, to serve willingly as an officer of the court in a capaicty *pro bono publico* (for the public good). *See, e.g., Peterson v. Nadler,* 452 F.2d 754, 758 (8th Cir. 1971). In the case of *Tyler v. Lark* we noted:

> "An applicant for admission to practice law may justly be deemed to be aware of the traditions of the profession which he is joining, and to know that one of these traditions is that a lawyer is an officer of the court obligated to represent indigents for little or no compensation upon court order. Thus, the lawyer has consented to, and assumed, this obligation and when he is called upon to fulfill it, he cannot contend that it is a 'taking of his services.'"

Tyler v. Lark, 472 F.2d 1077, 1079 (8th Cir.) (quoting *United States v. Dillon,* 346 F.2d 633, 635 (9th Cir. 1965), *cert. denied,* 382 U.S. 978 (1966)), *cert. denied,* 414 U.S. 864 (1973).

Many state courts have similarly observed that counsel must assist the court by carrying on *pro bono* representation in criminal cases. *See, e.g., Ex parte Dibble,* 310 S.E.2d 440, 441 (S.C. Ct. App. 1983) ("It has been traditionally held that a lawyer, by accepting a license to practice law, becomes an officer of the court and assumes the obligation of representing, without pay, indigent defendants in criminal cases."); *Yarbrough v. Superior Court of Napa County,* 150 Cal. App. 3d 388, —, 197 Cal. Rptr. 737, 741 (Ct. App. 1983) ("An attorney is an officer of the court before which he or she was admitted to practice and

is expected to discharge his or her professional responsibilities [to represent indigents] at all times, particularly when expressly called upon by the courts to do so."). Recently, the Supreme Court of Missouri held that attorneys licensed to practice in the state could be appointed to serve in criminal cases with no compensation:

> "The term 'profession,' it should be borne in mind, as a rule is applied to a group of people pursuing a learned art as a common calling in the spirit of public service where economic rewards are definitely an incidental, though under the existing economic conditions undoubtedly a necessary by-product. In this a profession differs radically from any trade or business which looks upon money-making and personal gain as its primary purpose. The lawyer cannot possibly get away from the fact that his is a public task. . . ."

State ex rel. Wolff v. Ruddy, 617 S.W.2d 64, 65-66 (Mo. 1981) (quoting Anton-Hermann Chroust, 1 *The Rise of the Legal Profession in America* x-xi (1965)), *cert. denied,* 454 U.S. 1142 (1982).

The profession of law rests upon its commitment to public service and has long been recognized as a profession that requires its membership to engage in *pro bono* activities. Acceptance of appointment under the CJA, a service that lawyers do not perform totally without compensation, is consistent with this obligation of the members of the bar.[7] Before the CJA provided for compensa-

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7. Although some compensation is afforded an attorney under the CJA, the Act does not attempt to fully compensate an attorney for the work performed. Thus, the Act has a *pro bono* factor built into its compensation scheme. *See infra* note 8 and accompanying text.

tion, many lawyers willingly accepted the defense of indigents in federal criminal cases without expectation of any compensation. The CJA was a recognition by Congress that indigent criminal defendants should have an opportunity to receive the services of competent counsel. Although the compensation allowed by the Act was never intended to fully recompense the lawyer for the time spent on a case, Congress intended that the amount allowed would at least approach the cost of a lawyer's overhead. It is true that the allowances awarded are much lower than the fees charged by many lawyers in non-indigent cases. However, the Act is intended to contain elements of *pro bono* work and not to be merely a government-subsidized, employment service.[8]

The North Dakota plan which contemplates that only lawyers who willingly volunteer for appointments will be assigned to indigent cases appears to rest on the Model Plan approved by the Criminal Justice Committee of

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8. The legislative history of the CJA states:

> As reported by the subcommittee, H.R. 4816 provided for compensation to court-appointed attorneys at a rate not to exceed $15 per hour for time reasonably spent, and carefully accounted for, on behalf of an impoverished defendant. This amount was conceded by virtually every witness at the hearings to be below normal levels of compensation in legal practice. It was nevertheless widely supported as a reasonable basis upon which lawyers could carry out their profession's responsibility to except [sic] court appointments, without either personal profiteering or undue financial sacrifice. . . .

H.R. Rep. No. 864, 88th Cong., 2nd Sess., *reprinted in* 1964 U.S. Code Cong. & Ad. News 2997-98. Since the enactment of the CJA, the hourly rate of compensation for attorneys has increased to $20 for preparation time and $30 for trial time.

the Judicial Conference.[9] Nonetheless, we find that Snyder's objections raise considerable concern as to the efficacy of any plan which depends totally upon voluntary participation.[10]

We find merit in the reasoning that there is an implied obligation to perform *pro bono* trial services on every licensed attorney who is engaged in litigation, not just those who are willing to come forward. The plan as now constituted penalizes those who specialize in criminal law because more than their share of the district's *pro bono* work falls on their shoulders; under a voluntary plan, particularly in rural areas, only a few attorneys come forward and this unduly results in a disproportion of assignments to a minority of the lawyers practicing in the district. Also, appointing only those who feel they have competence in criminal cases in no way assures competency; it is common knowledge that many counsel appointed by district courts under the CJA are young lawyers just out of law school trying to gain early experience in the trial of cases.

Because Snyder is participating under a plan which is purely voluntary, his refusal to serve is in technical compliance with the plan. However, his conditional agree-

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9. "Model Plan for the Composition, Administration and Management of the Panel of Private Attorneys under the Criminal Justice Act," *Guidelines for the Administration of the Criminal Justice Act,* Vol. VII, App. G, Guide to Judiciary Policies and Procedures.

10. We note that, in districts where a federal public defender program assumes a substantial representation of indigents in criminal cases, the plan adopted may be more flexible in accepting volunteers.

ment to serve in the future, if other attorneys who are competent to try cases are included on the panel, also has considerable merit. Under the Criminal Justice Act each district is required to submit for approval its plan for implementation of the CJA to the Judicial Council of the Circuit. 18 U.S.C. § 3006(a). We therefore refer the study as to alleged insufficiency of participation of the bar in the panels of the CJA to the district courts and the Judicial Council.

We recognize that any requirement that all active, licensed trial practitioners be eligible for appointment under the CJA raises the immediate question of competency and the continuing concern of the courts and the bar over the increasing number of suits relating to the charge of ineffective assistance of counsel in criminal cases. But in our judgment the fear of incompetent counsel being appointed is, for the most part, exaggerated.

The most common successful complaint relating to ineffective assistance of counsel is the failure of the lawyer to adequately investigate the case and to call defense witnesses. *See, e.g., United States v. Baynes,* 687 F.2d 659 (3rd Cir. 1982); *Eldridge v. Atkins,* 665 F.2d 228 (8th Cir. 1981), *cert. denied,* 456 U.S. 910 (1982); *Rummel v. Estelle,* 590 F.2d 103 (5th Cir. 1979). Competent lawyers who specialize in civil trials know that the success or failure of a trial depends on the thoroughness of the investigation of facts and of the trial preparation. This basic rule of trial preparation is true for civil as well as criminal cases; the attorney who is competent to practice in civil matters is competent to appear in criminal cases. Lawyers who specialize in civil cases must necessarily engage in a diversity of study in all spheres of our social, political, and

economic systems. The step across to the criminal law, by the experienced civil trial attorney, is really no step at all.

We also recognize that many civil trial lawyers are not currently conversant with the Rules of Criminal Procedure and the various rules governing the practice of criminal law.[11] Nonetheless we would deem it incumbent on the civil trial bar to become familiar with these rules, as they would any other procedural or substantive rule of law not previously encountered. Most civil lawyers are generalists; when confronted with a specialized area of litigation, they quickly master the law and the facts. Few lawyers process their first appeal to this court or to the Supreme Court of the United States without doing special study to master the new procedure at hand. We suggest that it is no more difficult to conduct a criminal trial than it is to conduct an intricate 10b-5 securities case or a complicated products-liability case.

Much of the criticism that has been leveled at the trial bar as to the lack of effective representation has focused on lawyers representing indigents in criminal

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11. The Model Plan provides:

> Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure and the Federal Rules of Evidence.

We note, generally, that knowledge of the Federal Rules of Criminal Procedure and Federal Rules of Evidence is necessary to pass most state bars. It is reasonable to assume that a lawyer may be called upon some day to use the skills which he or she was required to demonstrate to enter the legal profession.

cases.[12] While ineffective assistance of counsel certainly can occur in appointed-counsel cases, charges of incompetency of the criminal trial bar are distorted by the placing of the burden of indigent representation totally on a small segment of the bar. Skilled and experienced civil trial attorneys, some of the best advocates in the profession, are excused from service under the CJA by the Model Plan and district plans adopted in conformity therewith. It is immaterial whether their absence is related to the lack of economic incentive to serve under the CJA or to their alleged lack of experience in the criminal field. Clearly, when such a large number of competent trial attorneys are categorically removed from participation, services rendered to indigents will not consistently meet the highest standards of criminal representation. We do not believe that Congress, in passing the CJA, intended *pro bono* representations to fall upon the few; in this sense we think careful study by the district courts and the Judicial Council should be given to the idea that all active trial lawyers in the federal courts be obligated to provide *pro bono* services to the indigent either in the civil law or in the criminal defense field. *Cf. Nelson v. Redfield Lithograph Printing,* No. 83-2248 (8th Cir. Feb. 22, 1984).

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT
/s/ Robert D. St. Vrain

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12. For example, Chief Justice Burger has expressed concern that indigents suffer most from "incompetent trial advocates." Burger, *Some Further Reflections on the Problem of Adequacy of Trial Counsel,* 49 Fordham L. Rev. 1, 8 (1980). Judge Bazelon, a distinguished jurist of the D.C. Circuit, has been critical of the competency of the criminal defense bar for years. *See, e.g.,* Bazelon, *The Defective Assistance of Counsel,* 42 U. Cin. L. Rev. 1 (1973). Our opinion disagrees with Judge Bazelon's views that civil trial lawyers are not competent to try criminal cases. Judge Bazelon states that the time and money spent by a civil lawyer in learning how to try a criminal case "would be immense" and that too many of these lawyers would have to "rediscover the wheel." He also adds that the "uptown lawyer" often has a serious communication problem with the indigent client and that they are "not prepared for the cultural shock of learning that their client is neither middle class nor cast in their image of the 'deserving poor.' "

We must respectfully disagree. There is no empirical data to support Judge Bazelon's theory. The fact is, the present system of allowing only volunteers to come forward for appointment under the CJA brings forth many inexperienced, young lawyers looking for their first case to try. Appointing only those who specialize in criminal cases conveniently shields a vast number of experienced lawyers who seek an exclusive, civil practice because of the higher monetary rewards involved. The CJA is not designed to compensate any lawyer for his or her self-education. Nonetheless, we are confident that skilled civil trial lawyers could adjust to criminal practice, first, out of the professional obligation to provide effective counsel for the defendant; and second, out of concern for the quality of representation to be found generally in our courts and our profession.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 84-8017

In the Matter of:) On Order to Show
Attorney Robert J. Snyder.) Cause

PETITION FOR REHEARING IN BANC

RULE 16(d) 8th CIR.R. REQUIRED STATEMENT

We express a belief, based on a reasoned and studied professional judgment, that this appeal raised the following questions of exceptional importance: (1) denial of due process, (2) failure to disqualify pursuant to 28 USC § 455, (3) denial of First Amendment rights.

PETITION FOR REHEARING IN BANC

COMES NOW the undersigned, on behalf of Robert J. Snyder and pursuant to Rules 35 and 40 of the Federal Rules of Appellate Procedure, and hereby respectfully petition the full court for a rehearing in banc for the purpose of addressing the order and judgment of suspension of Robert J. Snyder entered by the Eighth Circuit Court of Appeals on April 13, 1984.

The rehearing in banc is sought upon the following grounds.

I.

That the order of suspension is based upon matters which were not a part of the Order to Show Cause issued

by the Eighth Circuit Court of Appeals, dated December 20, 1984. Accordingly, Mr. Snyder has not been accorded due process which requires: (1) Notice, (2) Opportunity to be heard, and (3) A meaningful hearing on the matters which serve as a basis for the suspension.

II.

That the Order to Show Cause advised Mr. Snyder that, pursuant to Rule 46 of the Federal Rules of Appellate Procedure he could request a hearing on his response before the full court which request was made by Mr. Snyder but was denied by Chief Judge Lay. A Motion was filed by Robert J. Snyder requesting that Chief Judge Lay not sit on the panel, which motion was denied. The opinion ordering suspension was drafted by Chief Judge Lay. It is respectfully submitted that Chief Judge Lay should have recused himself from the hearing panel and any consideration of the matter because of the provisions of 28 U.S.C. § 455.

III.

Suspension of Mr. Snyder, based upon the content of the letter dated October 6, 1983, to Helen Monteith, secretary to the Honorable Bruce M. Van Sickle would be in derogation and violation of Mr. Snyder's First Amendment rights.

ARGUMENT

This matter arises from a situation where Mr. Snyder was appointed to represent an indigent in the South-

western Division in the District of North Dakota in 1983. Mr. Snyder submitted his vouchers for payment which were returned for additional information on several occasions by the Circuit Court. As a result of his difficulty regarding submission of his vouchers, Mr. Snyder spoke with Helen F. Montieth who suggested to Mr. Snyder that he write a letter to her office stating his concerns regarding the frustration of counsel in representing indigent defendants and being compensated for it. (See Affidavit of Helen F. Monteith attached hereto as Exhibit A.) Helen F. Monteith then showed the letter to Judge Bruce M. Van Sickle and, at his direction, she sent it on to the Circuit Court. Judge Van Sickle did, in fact, review the letter and discussed the letter with Mr. Snyder. (See Judge Van Sickle Affidavit attached hereto as Exhibit B). Judge Van Sickle did not view the letter as one of disrespect for the court but rather one of a somewhat frustrated lawyer hoping that his comments might be viewed as a basis for some changes in the process. Judge Van Sickle and Helen F. Monteith both share in their affidavits that they did not regard the letter as one of disrespect for the court, or as showing a disrespect for the federal court system and both state that during the period of time that Mr. Snyder has been appearing before Judge Van Sickle he has always shown the highest respect to the court system and to Judge Van Sickle.

In any event, the letter dated October 6, 1983, which is a part of the court's record in this matter was sent to the Circuit Court of Appeals. On November 3, 1983, Chief Judge Lay addressed a letter to the Honorable Bruce M. Van Sickle referencing the letter Snyder wrote to Helen F. Monteith, which letter is also a part of the record

in this case, which letter contained statements of Chief Judge Lay that:

> [I] consider Mr. Snyder's letter to your secretary as being totally disrespectful to the federal courts and to the judicial system. It demonstrates a total lack of respect for the legal process and the courts....

The letter continued by stating:

> [I] question whether he is worthy of practicing law in the federal courts on any matter. It is my intention to issue an Order to Show Cause as to why he should not be suspended from practicing in any federal court in this district for a period of one year. This suspension, of course, will apply to his appearance in federal court in North Dakota. We will, of course, give Mr. Snyder an opportunity to respond before any final determination is made....

Chief Judge Lay, on December 20, 1983, did issue an Order to Show Cause which Order to Show Cause specifically stated:

> [H]e is hereby ordered to show cause within thirty (30) days of this order as to why he should not be suspended from practice in the federal district court, as well as in the United States Court of Appeals for the Eighth Circuit, for such period of time as his refusal to serve continues. Pursuant to Rule 46 of the Federal Rules of Appellate Procedure, Mr. Snyder may request a hearing on his response before the full court.

The Order to Show Cause thus directed Mr. Snyder to show cause why he should not be suspended from the

practice because of his refusal to serve as a lawyer representing indigents in the district of North Dakota. As a result of that specific directive, Mr. Snyder prepared a lengthy response which response included copies of the Criminal Justice Act for the District of North Dakota which had previously been approved by the Eighth Circuit Court of Appeals, showing that under the provisions of that act and its implementation that his stated refusal to serve as counsel for indigents from that time forward was allowed by the plan and, in fact, the statistics indicated that approximately 200 of some 275 lawyers in the Southwestern District of North Dakota had also, for various reasons, chosen not to serve on the panel. Mr. Snyder also requested a hearing before the full court as he had been advised in the Order to Show Cause that he could do.

A hearing was scheduled, but not before the full court, but before a three judge panel which included Judge Heaney, Judge Arnold and Judge Lay. Mr. Snyder upon being advised that the panel included Chief Judge Lay did enter a demand that Chief Judge Lay recuse himself because of his involvement in the matter through letters to the federal judges in the District of North Dakota and, specifically, the letter of November 3, 1983, to the Honorable Bruce M. Van Sickle, portions of which have been quoted above.

The hearing was held in St. Paul on February 16, 1983, at which time and date Mr. Snyder appeared pro se but was accompanied by an attorney who was directed by the Burleigh County Bar Association to file a Resolution of the Burleigh County Bar Association with the court

which is a part of the court's file in this matter. A copy of the Bar's Resolution is attached hereto and made a part hereof as Exhibit C.

The Return which was filed by Mr. Snyder was in direct response to the Order to Show Cause and explained the basis and reason that Mr. Snyder should not be suspended for having determined that he would not serve on the panel for indigent defendants. Nothing was included in the return regarding Mr. Snyder's guaranteed First Amendment rights of free speech, because the Order to Show Cause did not mention or direct that he show cause why he should not be suspended because of the content of the letter to Helen Monteith, dated October 6, 1983.

At the hearing on February 6, 1984, the bulk of the discussion centered on the content of the letter to Helen Monteith, dated October 6, 1983. The panel did indicate that their review of the North Dakota District Plan indicated that some revision was required.

At the conclusion of the hearing, the panel advised Mr. Snyder that he would be suspended from the practice in the federal courts unless, within ten (10) days, he submitted a letter to the court indicating that: 1. He would agree to serve on the panel under a newly revised plan, and 2. That when so serving he would comply with the guidelines in effect for the submission of billings for his services, and 3. That he retract or apologize for the language contained in the October 6, 1983, letter to Helen Monteith.

Mr. Snyder has agreed to items 1 and 2 and has sent such a letter to the court; however, he has refused to retract or apologize for the remarks in the letter.

Accordingly, on April 13, 1984, Chief Judge Lay authored an opinion for the panel which states at page 6 thereof:

> We find that Robert Snyder shall be suspended from the practice of law in the federal courts of the Eighth Circuit for a period of six (6) months; thereafter Snyder should make application to both this court and the Federal District Court of North Dakota to be readmitted.

It is respectfully submitted that the Order of Suspension should not be entered for various reasons which have been itemized above and which will be amplified upon hereafter.

In the first place, the Order to Show Cause specifically stated that he was to show cause why he should not be suspended from the practice "[F]or such period of time as his refusal to serve continues. . . ." In the opinion issued by the Circuit Court Panel, it is stated that Snyder was ordered to show cause why he should not be suspended from practice in the federal courts and the opinion states:

> Attorney Snyder has been cited:
>
> (1) For his refusal to continue to perform services in indigent cases under the Criminal Justice Act (CJA) 18 U.S.C. § 3006A (1982); and
>
> (2) For his disrespectful refusal to comply with the guidelines under the CJA relating to the submission of expenses and attorney's fees.

It is apparent that the above quoted language in the Order of Suspension is vastly different than the directive in the Order to Show Cause. Additionally, it is clear from the language in the opinion that the basis for the

court's ordering the suspension of Snyder was for his refusal to "Offer a retraction and sincere apology for his disrespectful remarks rendered in his letter of October 6th." (Page 3.) And, at page 6 of the opinion it is stated that "without hesitation we find Snyder's disrespectful statements as to this court's administration of CJA contumacious conduct." It then follows, in the next paragraph, that he is ordered suspended.

It is Snyder's position that he has been denied due process in that the Order to Show Cause was not directed to the language contained in the letter and, therefore in his Return to the Order to Show Cause he made no reference to it nor argument in respect to it. Had the Order to Show Cause stated that he was to show cause why he should not be suspended from practice because of the statements contained in the letter the Return to the Order to Show Cause would have referenced the First Amendment to the Constitution and the numerous decisions regarding freedom of speech.

Accordingly, it is respectfully submitted that Snyder has now been suspended because of the content of the letter without having had the due process of law because as to the content of the letter he has not been afforded: (1) Proper notice, (2) Opportunity to be heard, and (3) A meaningful hearing. He was not advised in the Order to Show Cause that the matters contained in the letter were to serve as the basis for a possible suspension and, therefore, he did not have an opportunity to appropriately respond.

Additionally, it is respectfully submitted that Chief Judge Lay should have recused himself in the considera-

tion of this matter because of the provisions of 28 U.S.C. § 455 which state in pertinent part as follows:

> Disqualification of justice, judge, magistrate or referee in bankruptcy.
>
> (a) Any justice, judge, magistrate, or referee in bankruptcy of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> a. Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; . . .

The language of that statute is also a part of Canon 3C. of the Model Rules of Professional Conduct and Code of Judicial Conduct which states in pertinent part as follows:

> (1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, included but not limited to instances where:
>
> (a) He has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings; . . .

It is respectfully submitted that Judge Lay's initial involvement in the matter before the issuance of the Order to Show Cause does bring into play the provisions of 28 U.S.C. § 455 because he did have personal knowledge of facts concerning the proceeding.

Snyder did request that Chief Judge Lay recuse himself, however, Chief Judge Lay did not recuse himself and, in fact, sat as the Chief Judge of the panel and, subsequently, wrote the opinion suspending Mr. Snyder for a period of six (6) months.

In Chief Judge Lay's letter to the Honorable Bruce M. Van Sickle of November 3, 1983, he stated that he was going to issue an Order to Show Cause why Snyder should not be suspended "[F]or a period of one year."

It is, therefore, respectfully submitted that Chief Judge Lay should have recused himself from any consideration of this matter and that his failure to do so is sufficient basis for a rehearing in banc and the subsequent dismissal of the proceeding against Mr. Snyder.

Additionally, it is respectfully submitted that the Order of Suspension should be set aside because to order his suspension because of the language in the letter to Helen Monteith would violate his First Amendment rights.

It is apparent from the decision that the suspension of Mr. Snyder is entered not on the grounds set forth in the Order to Show Cause, but because of the language contained in the October 6, 1983, letter to Helen Monteith. It is respectfully submitted that, since that is the basis of suspension, it is necessary to address the First Amendment Freedom of Speech rights that lawyers and all other persons are entitled to under the First Amendment to the Constitution. In the October 6, 1983, letter all Mr. Snyder did was complain to the federal district court secretary about problems he had encountered in his representation of indigents in the court, which letter was written at the secretary's suggestion. The letter simply vents frustra-

tion of a practicing attorney towards a system which has not been working particularly well.

Additionally, and more importantly, it is respectfully submitted that, under the First Amendment, Mr. Snyder had the right to say what he said in the October 6th letter without fear of reprisal. The cases dealing with the subject of First Amendment rights make clear that truthful criticism is protected by the First Amendment, subject to regulation only to the extent that it presents a clear and imminent threat to the fair administration of justice or involves conduct disruptive of a judicial proceeding. See *Craig v. Harney,* 331 U.S. 367 (1947); *Pennekamp v. Florida,* 328 U.S. 331 (1946); *Bridges v. California,* 314 U.S. 352 (1940); and *Polk v. State Bar of Texas,* 374 F. Supp. 784 (N.D. Tex. 1974).

Regarding the constitutional standard applicable to the regulation of a lawyers extra judicial criticism of the judiciary, the Supreme Court in *Bridges* explained that clear and present danger "[I]s a working principle that the substance of evil must be extremely serious and the degree of imminence extremely high before utterances can be punished." (314 U.S. at 263). (See also: In re: Hinds, 449 A.2d 483 (N.J. 1983)).

A private letter written to the local federal district court judge's secretary simply does not rise to the level that it can be said to be an imminent threat to the fair administration of justice or disruptive of a judicial proceeding.

Therefore, it is respectfully requested that on the grounds and for the reasons above stated it is appropriate that a rehearing be held in the captioned action in banc.

Dated this 20th day of April, 1984.

Respectfully submitted,

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McDonald & Johnson
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By: /s/ John C. Kapsner
John C. Kapsner

EXHIBIT "A"

AFFIDAVIT

STATE OF NORTH DAKOTA)
) ss
COUNTY OF BURLEIGH)

I, Helen F. Monteith, being first duly sworn, state:

1. That Mr. Robert J. Snyder represented an indigent defendant before Judge Bruce M. Van Sickle in 1983, and experienced difficulty in the processing of his voucher.

2. Mr. Snyder called this office and told me of his difficulty. I suggested he write a letter to this office stating his concerns regarding the frustration of counsel in representing indigent defendants, and being compensated for it.

3. He sent a letter which I showed to Judge Van Sickle, and at the Judge's direction sent it on to the Circuit Court.

4. I have known Mr. Snyder for a number of years. He has always been willing to accept his share and more of the indigent defense cases in the Southwestern Division of the District of North Dakota, and I believe he did not intend to show disrespect for the federal court system.

Bismarck, North Dakota this 19th day of April, 1984.

/s/ Helen F. Monteith

Helen F. Monteith

Subscribed and sworn to before me this 19th day of April, 1984.

/s/ Jacquelin Beaudoin
Jacquelin Beaudoin, Notary Public
Burleigh County, North Dakota

My commission expires: 12/10/88

EXHIBIT "B"

AFFIDAVIT

I, Bruce M. Van Sickle, United States District Judge, District of North Dakota, state:

1. That Mr. Robert J. Snyder represented indigents before me on a number of occasions.

2. That in 1983 he was involved in representing an indigent defendant, and experienced problems in processing his voucher.

3. That Mr. Snyder sent my office a letter protesting his difficulties.

4. I discussed the letter with Mr. Snyder. My concern was the protest over the fee schedule, and his protest over the paper work required.

5. I did not view the letter as one of disrespect for the Court, but rather one of a somewhat frustrated lawyer hoping that his comments might be viewed as a basis for some changes in the process.

6. Mr. Snyder has appeared before me on a number of occasions and has always competently represented his client, and has shown the highest respect to the court system and to me.

Bismarck, North Dakota this 19th day of April, 1984.

/s/ Bruce M. Van Sickle
Bruce M. Van Sickle, Judge
United States District Court

EXHIBIT "C"

RESOLUTION

WHEREAS, Robert Snyder has been a member of the Burleigh County Bar Association since he and his two partners opened their practice in Bismarck, North Dakota, in 1977, following graduation from law school; and

WHEREAS, since that time Robert Snyder has developed his practice and enjoys the respect of the entire membership of the Burleigh County Bar Association, and is recognized as a hard-working, well-qualified, ethical attorney, who is a credit to the legal profession in Burleigh County and the State of North Dakota; and

WHEREAS, during the same period of time Robert Snyder has involved himself in community activities which are a credit to him individually, and also reflect positively on the legal profession in this community; and

WHEREAS, Robert Snyder has been on a panel of attorneys who are called upon to defend indigents in Federal District Court in the Southwestern Division of the District of North Dakota, and that between January, 1980 and December, 1983, out of 99 indigent appointments, Robert Snyder has personally accepted 8 of the appointments, and his two partners have accepted an additional 7 indigent appointments, for a total of 15 indigent appointments, or more than 15% of the appointments in all indigent cases handled in the Southwestern Division during the three year period; and

WHEREAS, there are approximately 276 licensed non-corporate and non-government private practitioners practicing law in the Southwestern Division of the District of North Dakota; and

WHEREAS, the Criminal Justice Act plan for the district of North Dakota presently in effect as approved by the Eighth Circuit Court of Appeals provides that the panel shall include lawyers who ". . . are competent to give adequate representation to parties under the Act, and are willing to serve." And,

WHEREAS, the panel of attorneys for the Southwestern Division of the District of North Dakota currently on file under the Act only has 87 of the approximately 276 licensed practitioners included thereon, which makes it clear that only approximately 31% of those licensed

practitioners eligible for appointment have indicated that they ". . . are willing to serve". And,

WHEREAS, the Burleigh County Bar Association has been advised that Robert Snyder has requested that his name be removed from the Criminal Justice Act panel of attorneys, and that as a result of that request, he has been ordered to show cause in the Eighth Circuit Court of Appeals why he should not be suspended from practice in the Federal District Court in North Dakota as well as in the United States Court of Appeals for the Eighth Circuit for such period of time as his refusal to serve continues; and

WHEREAS, in March, 1982, at a meeting of the Federal Practice Committee, the Federal District Court for North Dakota appointed a subcommittee to review the problems with the Criminal Justice Act appointment system within the District of North Dakota; and

WHEREAS, the Burleigh County Bar Association recognizes and believes that the current system places an undue burden upon some practitioners and other practitioners are not called upon in any manner for service to the indigents; and

WHEREAS, the record reflects that Robert Snyder and his lawfirm have accepted appointment to represent 15% of the cases where counsel have been appointed for indigents in the Southwestern District of the District of North Dakota between January, 1980 and December, 1983, the Burleigh County Bar Association believes that Robert Snyder has fulfilled in a more than satisfactory manner his obligations as a member of the Bar; and

WHEREAS, at least 69% of the licensed practitioners in the Southwestern District of the District of North Dakota have chosen not to serve as counsel for the indigents by not having their names included on the panel of lawyers available for appointment as allowed under the current Criminal Justice Act plan, and no disciplinary action has been commenced against any of said lawyers.

NOW, THEREFORE, BE IT RESOLVED that the Burleigh County Bar Association urges that the Eighth Circuit Court of Appeals not issue an order suspending Robert Snyder from practice in the Federal District Court for North Dakota and the Eighth Circuit Court of Appeals, because the Burleigh County Bar Association believes that Robert Snyder is a credit to the legal profession, and that the record above outlined reflects that he has shouldered more than his fair share of the cases involving indigent criminal defendants, and the Burleigh County Bar Association believes that the Criminal Justice Act plan should be reviewed and revised, and that the roll of attorneys should be revised and updated so that the burden and responsibility of defending indigents can be more evenly distributed among all members of the Bar.

Said Resolution to be filed with the Eighth Circuit Court of Appeals on behalf of Robert Snyder.

Dated this 15th day of February, 1984.

Burleigh County Bar Association

By /s/ Jo Wheeler Johnson
Jo Wheeler Johnson, President

Attest:
/s/ William Severin
William Sevein, Secretary

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 84-8017

In the Matter of:) On Petition for
Attorney Robert J. Snyder) Rehearing En Banc.

Filed: May 31, 1984

ORDER DENYING PETITION FOR REHEARING EN BANC

Before LAY, Chief Judge, HEANEY, BRIGHT, ROSS, McMILLIAN, ARNOLD, JOHN R. GIBSON, FAGG, and BOWMAN, Circuit Judges.

HEANEY, Circuit Judge.

This matter comes before the Court on a petition for rehearing en banc. Attorney Snyder, now represented by counsel, raises several points in his petition: (1) that Chief Judge Lay should recuse himself under 28 U.S.C. § 455(b)(1) because of his personal knowledge of facts gained under the Criminal Justice Act (CJA); (2) that Snyder was not given proper notice that his allegedly disrespectful letter could be a basis for discipline; (3) that Snyder's letter of complaint was an exercise of free speech protected by the First Amendment; (4) that his letter was not disrespectful; and (5) that the district court and the court secretary encouraged Mr. Snyder in directing that the letter of complaint be sent.

Before dealing with these arguments, we think it wise to state the facts more precisely. Robert Snyder was

appointed by the United States District Court for the District of North Dakota to represent 12 defendants in a period from January 1, 1979 to early 1984. It appears from the record that eight of these cases were disposed of without trial and four involved at least some court appearances. According to the records that have been furnished to this Court, Mr. Snyder devoted approximately 270 hours to these cases over a four and one-half year period.

On August 9, 1983, Mr. Snyder completed work on a case in which he had been appointed to represent an indigent, and submitted a voucher in the sum of $1,898.55 to the district court for payment. Judge Bruce Van Sickle reduced the claim by $102.50 and forwarded this voucher to this Court on August 17. On September 6 this Court returned the voucher to Mr. Snyder requesting him to submit a detailed memorandum pursuant to 22.2 B of the guidelines, and to support his claim for long distance calls by attaching an itemized statement. The voucher was returned to us on September 26, but because he did not have both the number of hours expended as well as the dollar amounts, requested by the guidelines, it was returned by this Court to Mr. Snyder on the same date. On October 20, the completed voucher was returned to this Court. Included in the return was Mr. Snyder's letter of October 6; this letter is attached hereto as Addendum No. 1. The letter stated in part:

> We have sent you everything we have concerning our representation, and I am not sending you anything else. You can take it or leave it.
>
> Further, I am extremely disgusted by the treatment of us by the Eighth Circuit in this case, and you

are instructed to remove my name from the list of attorneys who will accept criminal indigent defense work. I have simply had it.

On November 3, 1983, Chief Judge Lay wrote to Judge Van Sickle the letter which is attached hereto as Addendum No. 2. A copy of this letter was sent to Mr. Snyder. In that letter Chief Judge Lay stated in part:

> I consider Mr. Snyder's letter to your secretary as being totally disrespectful to the federal courts and to the judicial system. It demonstrates a total lack of respect for the legal process and the courts.
>
> • • • •
>
> Mr. Snyder indicates that he would like to have his name removed from the list of attorneys who will be appointed to represent indigent criminal defendants. As far as the court is concerned, I will honor that request and I instruct you to remove his name from the list of attorneys who will be appointed in criminal cases. However, in view of the letter that Mr. Snyder forwarded, I question whether he is worthy of practicing law in the federal courts on any matter. It is my intention to issue an order to show cause as to why he should not be suspended from practicing in any federal court in this circuit for a period of one year. This suspension, of course, will apply to his appearance in federal court in North Dakota. We will, of course, give Mr. Snyder an opportunity to respond before any final determination is made.

On December 20, 1983, Chief Judge Lay caused to be issued the order to show cause which forms the basis of the present proceedings. A hearing on the order to show

cause was held on February 15, 1983. At the hearing to show cause, Judge Richard Arnold read excerpts of Snyder's letter of October 6 to Mr. Snyder and asked Mr. Snyder the following question: "I am asking you sir if you are prepared to apologize to the Court for the tone of your letter." Mr. Snyder responded as follows: "That is not the basis that I am being brought forth before the Court today. It is not an apology and I could have apologized when an apology was demanded from Judge Lay and I declined • • • but I did not apologize then and I am not apologizing now." Judge Arnold stated to Mr. Snyder: "I just want to get this clear that you are declining to apologize for the letter of October 6." Snyder said: "I am." At the close of the hearing the Court gave Mr. Snyder an additional ten days in which to state that he was willing and ready to represent indigent defendants, that he would comply with the guidelines, and that he would apologize to the Court for his letter of October 6.

On February 22, Snyder wrote to this Court stating:

> If and when a new Plan for the implementation of the Criminal Justice Act in the State of North Dakota is enacted, the undersigned will enthusiastically obey its mandates, just as he has obeyed the mandates, or lack thereof, in the existing Plan.
>
> Further, the undersigned states that he will make every good faith effort possible to comply with the Court's guidelines regarding the payment of attorney's fees and expenses. [See Addendum No. 3.]

No apology for the October 6 letter was made. Thereafter, on February 24, 1984, Chief Judge Lay wrote to Mr. Snyder giving him another opportunity to apologize. He stated: "I am confident that if such a letter is forthcoming

that the Court will dissolve the order." See Addendum No. 4.

Mr. Snyder responded as follows:

> I am in receipt of your letter dated February 24, 1984. Please be advised that my letter of February 22, 1984 entirely states my position concerning this matter.
>
> I cannot, and will never, in justice to my conscience, apologize for what I consider to be telling the truth, albeit in harsh terms. You must therefore search your conscience and determine what course of action will best serve the interest of justice and the administration of the Eighth Circuit.
>
> It is unfortunate that the respective positions in the proceeding have so hardened. However, I consider this to be a matter of principle, and if one stands on principle, one must be willing to accept the consequences.
>
> Thank you for your time and attention.

We turn now to the arguments raised by Snyder on his petition for rehearing en banc. We deal with them seriatim.

First, it is clear that a judicial officer is not disqualified under 28 U.S.C. § 455 because of personal knowledge of facts unless the knowledge arises out of extra-judicial observation or misconduct. See United States v. Coven, 662 F.2d 162, 168 (2d Cir. 1981), cert. denied, 456 U.S. 916 (1982). Chief Judge Lay, in processing Snyder's claim and in seeking information to process the claim, was carrying out his judicial responsibilities. Any factual information gained in doing so or any judicial action taken by him as chief judge did not in any way arise, in an extra-judicial capacity. Chief Judge Lay possesses no personal bias against Snyder and properly served on the panel to hear Mr. Snyder's response to the Court's show cause order.

Second, it is abundantly clear from the record that Snyder had notice that his disrespectful letter could be a basis for discipline. Snyder was given at least three opportunities to apologize for the letter and declined to do so.

Third, Snyder's counsel states that Mr. Snyder's letter was an exercise of free speech. Snyder urges that he should not be disciplined for exercising his First Amendment rights to criticize, and express frustration toward, the Court. The gravamen of the situation is that Snyder in his letter became harsh and disrespectful to the Court. It is one thing for a lawyer to complain factually to the Court, it is another for counsel to be disrespectful in doing so.

It is well settled that disrespectful remarks by an officer of the court do not fall within the ambit of protected speech. As Justice Stewart stated: "Obedience to official precepts may require abstention from what in other circumstances might be constitutionally protected speech." In re Sawyer, 360 U.S. 622, 646-647 (1959) (Stewart, J., concurring).[1]

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1. See also State v. Nelson, 504 P.2d 211, 214 (Kan. 1972), which states:

(Continued on next page)

Fourth, Snyder states that his letter is not disrespectful. We disagree. In our view, the letter speaks for itself.

Snyder seeks to mitigate his conduct by stating that the district court and the district court's secretary directed that the letter be sent. It appears from the affidavit of Judge Bruce Van Sickle that he was aware of Mr. Snyder's letter to his secretary and viewed it as that of a frustrated lawyer hoping that his comments with respect to the fee schedule and the paperwork would serve as a basis for some change in the process. There is nothing in the record to indicate that Judge Van Sickle instructed Mr. Snyder to be disrespectful to this Court. Snyder wrote the letter, he is intelligent and capable of independently evaluating the ramifications of his conduct, and he must take responsibility for his own actions.

We have difficulty with the proposition that we should condone, or that anyone should approve, a lawyer's exercise of open disrespect for the court before which the lawyer practices. To repeat what we have earlier observed, "a display of insolence and disrespect to [the Court] is an insult to the majesty of the law itself." In the Matter of: Attorney Robert J. Snyder, No. 84-8017, slip op. at 6 n.6 (8th Cir. April 13, 1984). However, because of Snyder's past cooperation with the district court

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(Continued from previous page)

Concerning respondent's argument that DR 1-102 (A) (5) creates an impermissible and chilling effect on "First Amendment freedoms," an examination of decisions on the point (12 A.L.R.3d, Anno., p. 1408) reveals the concensus to be that an attorney's right to free speech is tempered by his obligation to both the courts and the bar, an obligation to which ordinary citizens are not held.

in serving on pro bono matters, because of his now professed willingness to continue to do so and to comply with the CJA guidelines, and because of the alleged misunderstanding as to the reasons for his suspension—we conditionally vacate the panel's order of suspension and provide an additional 10 days from the date of this order for Attorney Snyder to provide a sincere letter of apology to this Court for the disrespectful comments directed to the Court in his letter of October 6, 1983, sent to Judge Van Sickle's secretary. The clerk is directed that if Snyder fails to comply with this request, our original order of suspension will be reinstated with the six month suspension to run from the date of the original order. The Clerk is further directed to send a copy of this order to each of the lawyers who signed the petition for rehearing en banc and to the president and secretary of the Burleigh County Bar Association.

The petition for rehearing en banc is denied on the ground that the majority of judges in regular active service did not vote to grant the petition as required by Fed. R. App. P. 35.

BRIGHT and McMILLIAN, Circuit Judges, would grant the petition for rehearing en banc.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT.

ADDENDUM NO. 1

BICKLE, COLES AND SNYDER, CHARTERED
Attorneys at Law
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The Little Building
P.O. Box 2071
Bismarck, North Dakota 58502-2071

Gregory L. Bickle
James J. Coles
Robert J. Snyder

Telephone
(701) 258-1611

October 6, 1983

Helen Monteith
Federal Building
3rd Street & Rosser Avenue
Bismarck, ND 58501

Re: United States of America vs. Dennis Warren

Dear Helen:

I am in receipt of the letter of September 26, 1983, from the Eighth Circuit Court of Appeals, in which our latest attempt to justify our time and expenses for Dennis Warren has again been set back. This letter is for the purpose of responding to that letter.

In the first place, I am appalled by the amount of money which the federal court pays for indigent criminal defense work. The reason that so few attorneys in Bismarck accept this work is for that exact reason. We have, up to this point, still accepted the indigent appointments, because of a duty to our profession, and the fact that nobody else will do it.

Now, however, not only are we paid an amount of money which does not even cover our overhead, but we have to

go through extreme gymnastics even to receive the puny amounts which the federal courts authorize for this work. We have sent you everything we have concerning our representation, and I am not sending you anything else. You can take it or leave it.

Further, I am extremely disgusted by the treatment of us by the Eighth Circuit in this case, and you are instructed to remove my name from the list of attorneys who will accept criminal indigent defense work. I have simply had it.

Thank you for your time and attention.

Very truly yours,

BICKLE, COLES AND SNYDER, CHARTERED

/s/ Robert J. Snyder
Robert J. Snyder
Attorney at Law

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18 U.S.C. §3006A(d)(1-4) (1982) provides:

(d) *Payment for representation*

(1) Hourly rate.—Any attorney appointed pursuant to this section or a bar association or legal aid agency or community defender organization which has provided the appointed attorney shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding $30 per hour for time expended in court or before a United States magistrate and $20 per hour for time reasonably expended out of court, or such other hourly rate, fixed by the Judicial Council of the

Circuit, not to exceed the minimum hourly scale established by a bar association for similar services rendered in the district. Such attorney shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States magistrate or the court.

(2) Maximum amounts.—For representation of a defendant before the United States magistrate or the district court, or both, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed $1,000 for each attorney in a case in which one or more felonies are charged, and $400 for each attorney in a case in which only misdemeanors are charged. For representation of a defendant in an appellate court, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed $1,000 for each attorney in each court. For representation in connection with a post-trial motion made after the entry of judgment or in a probation revocation proceeding or for representation provided under subsection (g) the compensation shall not exceed $250 for each attorney in each proceeding in each court.

(3) Waiving maximum amounts.—Payment in excess of any maximum amount provided in paragraph (2) of this subsection may be made for extended or complex representation whenever the court in which the representation was rendered, or the United States magistrate if the representation was furnished exclusively before him, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the circuit.

(4) Filing claims.—A separate claim for compensation and reimbursement shall be made to the district court for representation before the United States magistrate and the court, and to each appellate court before which the attorney represented the defendant. Each claim shall be supportd by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the United States magistrate and the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney or to the bar association or legal aid agency or community defender organization which provided the appointed attorney. In cases where representation is furnished exclusively before a United States magistrate, the claim shall be submitted to him and he shall fix the compensation and reimbursement to be paid. In cases where representation is furnished other than before the United States magistrate, the district court, or an appellate court, claims shall be submitted to the District Court which shall fix the compensation and reimbursement to be paid.

Pertinent Excerpts from *Guidelines for the Administration of the Criminal Justice Act,* Ch. 2 § 3 (2.22, 2.27), Vol. VII, Guide to Judiciary Policies and Procedures

2.22 Limitations.

A. *Hourly Rates.* Counsel may be compensated at rates not exceeding $30 per hour for time expended in

court or before a United States magistrate and $20 per hour for time reasonably expended out of court. The hourly rates of compensation are designated and intended to be maximum rates and to be treated as such. In each district court, counsel claiming in execess of $750 shall attach to the CJA voucher a memorandum detailing the services provided. The memorandum shall be in both narrative and statistical form and provide justification for hours spent. Whenever warranted by the circumstances of the case, counsel claiming less than $750 in a district court, and counsel claiming any amount in a court of appeals, may be required by the presiding judicial officer to submit a memorandum supporting and justifying the compensation claimed.

B. *Maximum Compensation.*

1. *Preliminary Proceedings and Proceedings Before a United States District Court.* Compensation (exclusive of allowable expenses) is limited to $1,000 for each attorney in a case in which one or more felonies are charged, to $400 for each attorney in a case in which only misdemeanors are charged in preliminary proceedings and proceedings before a United States district court, and to $250 for each attorney in connection with a post-trial motion made after entry of judgment, or in a probation or parole revocation or parole termination proceeding, or for representation as provided under Subsection (g). If a case is disposed of at an offense level lower than the offense originally charged, the compensation maximum is determined by the higher offense level. In capital cases or in other difficult cases in which the court finds it necessary to appoint more than one attorney, the limita-

tions apply to each attorney. Payments in excess of these limitations may be made to provide fair compensation in cases involving extended or complex representation when so certified by a United States district judge or magistrate, as applicable, and approved by the Chief Judge of the United States Court of Appeals. The finding of the court that the appointment of an additional attorney in a difficult case was necessary and in the interest of justice shall appear on the Order of Appointment.

Counsel claiming payment in excess of the statutory maximum shall submit with his voucher a detailed memorandum supporting and justifying counsel's claim that the representation given was in an extended or complex case, and that the excess payment is necessary to provide fair compensation. Upon preliminary approval of such claim by the district court, the court should furnish to the chief judge of the circuit a memorandum containing his recommendations and a detailed statement of reasons.

In determining if an excess payment is warranted, the district court judge and the chief judge of the Circuit should make a threshold determination as to whether the case is either extended or complex. If the legal or factual issues in a case are unusual, thus requiring the expenditure of more time, skill and effort by the lawyer than would normally be required in an average case, the case is "complex". If more time is reasonably required for total processing than the average case, including pre-trial and post-trial hearings, the case is "extended."

After establishing that a case is extended or complex, the approving judicial officer should determine if excess payment is necessary to provide fair compensation. The

following criteria, among others, may be useful in this regard: responsibilities involved measured by the magnitude and importance of the case; manner in which duties were performed; knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; nature of counsel's practice and injury thereto; any extraordinary pressure of time or other factors under which services were rendered; and any other circumstances relevant and material to a determination of a fair and reasonable fee.

2. *Proceedings in Courts of Appeals.* The $1,000 limitation applies to the compensation payable for each attorney in an appellate court, including the district court on appeals from a magistrate's judgment. Appeals of post-trial motions, revocations of probation or parole, or other representation under Subsection (g) of the Act are subject to the $250 limitation for each attorney as provided in the last sentence of Subsection (d) (2) of the Act. Payment in excess of these limitations may be made to provide fair compensation in cases involving extended or complex representation when so certified by the court and approved by the Chief Judge of the Circuit.

C. *Reduction of CJA Compensation Vouchers by the Reviewing Judicial Officer.* The Criminal Justice Act provides that the reviewing judicial officer shall fix the compensation and reimbursement to be paid to appointed counsel. In cases where the amount approved is less than was requested by appointed counsel, the judicial officer may wish to notify appointed counsel that his or her claim for compensation and/or reimbursement has been reduced, and to provide an explanation for the reasons for the reduction.

D. *Payments by a Defendant Under Subsection (f) of the Act.* No appointed attorney shall accept a payment from or on behalf of the person represented without authorization by a United States district or circuit judge or magistrate on CJA Form 7. If such payment is authorized, it shall be deducted from the fee to be approved by the court under Subsection (d) of the Act. In this regard, the combined payment to any one attorney for compensation from both the person represented and the Government shall be subject to applicable dollar limitations, unless excess compensation is approved under Subsection (d)(3) of the Act. Whenever the court finds that funds are available for payment from or on behalf of a person represented and directs that such funds be paid to the court for deposit in the Treasury, a check or money order drawn to the order of the Administrative Office of the United States Courts should be transmitted by the clerk of court to the Administrative Office together with completed CJA Form 7. The collections which are for deposit to the credit of the CJA appropriation will be processed by and included in the account of the Disbursing Officer of the Administrative Office. Subsection (f) of the Act does not authorize a judicial officer to require reimbursement as a condition of probation.

E. *Services Before United States Magistrates.* Magistrates may only approve vouchers for services rendered in connection with a case disposed of entirely before the magistrate.

2.27 Reimbursable Out-of-Pocket Expenses. Out-of-pocket expenses reasonably incurred may be claimed on the voucher, and must be itemized and reasonably documented. Expenses for investigations or other services un-

der Subsection (e) of the Act shall not be considered out-of-pocket expenses.

A. *Reimbursement for Transcripts.* The cost of court authorized transcripts may be claimed as a reimbursable expense, as provided for in Subsection (d)(1) of the Criminal Justice Act (but see paragraph 3.12 of these Guidelines). Claims for reimbursement for payments for transcripts authorized by the court should be submitted on CJA Form 24. (See Appendix A) The cost of transcribing depositions in criminal cases is the responsibility of the Department of Justice pursuant to Rule 17b of Fed. R. Crim. P. (but when a witness is an expert, then the Administrative Office will pay out of CJA funds) (39 Comp.Gen.133 (1959)).

B. *Travel Expenses.* Travel by privately owned automobile should be claimed at the rate currently prescribed for Federal judiciary employees who use a private automobile for conduct of official business, plus parking fees, ferry fares, and bridge, road, and tunnel tolls. Transportation other than by privately owned automobile should be claimed on an actual expense basis.

Per diem in lieu of subsistence is not allowable, since the Act provides for reimbursement of expenses actually incurred. Therefore, counsel's expenses for meals and lodging incurred in the representation of the defendant would constitute reimbursable "out-of-pocket" expenses. In determining whether actual expenses incurred are "reasonable," counsel should be guided by the prevailing limitations placed upon travel and subsistence expenses of Federal judiciary employees in accordance with existing government travel regulations.

C. *Interim Reimbursement for Expenses.* Where it is considered necessary and appropriate in a specific case, the presiding judge or magistrate may, in consultation with the Administrative Office, arrange for interim reimbursement to counsel of extraordinary and substantial expenses incurred in providing representation in a case.

D. *Other.* This would include items such as telephone toll calls, telegrams, copying (except printing—see paragraph 2.28 D below) and photographs.